

REPORTER'S RECORD
VOLUME 1 OF 1 VOLUME
TRIAL COURT CAUSE NO. 2011-76724

HARRIS COUNTY, TEXAS,
Plaintiff, and THE STATE OF
TEXAS, acting by and through
The TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY, *a*
Necessary and indispensable
Party

v.

INTERNATIONAL PAPER COMPANY,
MCGINNES INDUSTRIAL
MAINTENANCE CORPORATION,
WASTE MANAGEMENT, INC., AND
WASTE MANAGEMENT OF TEXAS,
INC., *Defendants*.

* IN THE DISTRICT COURT OF

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* HARRIS COUNTY, T E X A S

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* 295TH JUDICIAL DISTRICT

REPORTER'S RECORD

DAILY COPY

OCTOBER 16, 2014

On the 16th day of October, 2014, the trial came on
to be heard in the above-entitled and -numbered cause;
and the following proceedings were had before the
Honorable Caroline Baker, Judge Presiding, held in
Houston, Harris County, Texas:

Proceedings reported by computerized stenotype
machine; Reporter's Record produced by computer-assisted
transcription.

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1 OCTOBER 16, 2014

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3 (Jury Present)

4 THE COURT: Please be seated.

5 Good morning again, ladies and gentlemen.
6 I'm going to read you additional instructions which
7 apply now that you are on the jury. I'm going to read
8 in some stipulations, and then we will proceed with
9 opening statements.

10 (After the jury instructions were read by
11 the Court, the following proceedings were had:)

12 THE COURT: Does everyone understand these
13 instructions? If you do not, please tell me now.

14 All right. Let me go through what we're
15 going to be doing so we have an idea of the process. As
16 we talked about at the beginning of the voir dire, this
17 is a civil case that's tried to a jury. In a civil case
18 the plaintiff has the burden of proof, so the plaintiff
19 will go first. The plaintiff will make an opening
20 statement and then the defendants, if they so choose,
21 will make opening statements. Then the plaintiff puts
22 on their evidence, then the defendants put on their
23 evidence.

24 Then we do something outside your presence
25 that's called the Charge conference. Really, all that

1 is is the attorneys and the Judge get together and
2 decisions are made as to what questions are going to be
3 submitted to you for you to answer, and they're all
4 written up in a document called the Court's Charge.

5 We give each of you a copy of that document
6 when we bring you back in the courtroom, and I read
7 through that entire document with you. It will have
8 additional instructions, some definitions and the actual
9 questions you are going to answer as jurors. At that
10 time we proceed to closing arguments.

11 The plaintiffs go first, then the
12 defendants, then the plaintiff, because they have the
13 burden of proof, has a rebuttal argument, the last say,
14 so to speak. It's after that time that you are sent to
15 the jury room to begin deliberating on the questions.
16 You'll select a presiding juror, deliberate on the
17 questions, fill in your answers and come into court with
18 your verdict. That's typically how these cases go.

19 From time to time you may see the attorneys
20 object. Sometimes they may ask to approach the bench,
21 sometimes we may go out in the hallway. Sometimes we
22 may send you into the jury room while we deal with
23 something outside your presence. First of all, please
24 do not hold that against any of these attorneys; that's
25 parts of their job as advocates. These are things for

1 the record. It doesn't have anything to do with you,
2 and I don't want you to be annoyed or irritated or hold
3 that against them when they do their job. Everybody
4 comfortable with that?

5 Also, I may have mentioned this before.
6 While I think the technology in this courtroom is
7 wonderful, there's one piece of the technology I don't
8 particularly like. There is a button I could push that
9 would put white noise over your head and we can have
10 conferences up at the bench. I think it's obnoxious,
11 because you just sit there and listen to noise while we
12 sit up here at the bench and talk. I think you would
13 probably rather be in the jury room, it's more
14 comfortable, while we take care of our business in here.
15 Please understand that's what I'm doing when I send you
16 out into the jury room and know that we're in here
17 working, not keeping you waiting. Does everybody
18 understand those instructions?

19 Okay. Here is the most important
20 instruction I can give you. The reason our system works
21 as well as it does is because we have people like you
22 sitting on juries, making the decisions in these cases.
23 You, as jurors, are the sole judges of the credibility
24 of the witnesses and the weight to be given the
25 evidence.

1 Sometimes when people haven't been through
2 this process before, maybe they're a little nervous, may
3 have some other reason, they might have a tendency to
4 look to the Judge to see how they should react to the
5 evidence. That is not okay. First of all, it's
6 irrelevant what I think.

7 I'm here simply to administer the law. You
8 will see me doing some other things, because I'm
9 presiding over other cases while I'm presiding over this
10 trial, and I may be signing orders and things. I have
11 an expressive face. I might be reacting to something
12 that has nothing do with this lawsuit. It's not fair to
13 these fine attorneys and their clients for you to look
14 to anyone else, including me, to decide what you think
15 about the evidence. I need to make sure that every
16 juror is comfortable making the commitment that you will
17 decide for yourselves what you think about the evidence
18 in this case.

19 Is everybody comfortable making that
20 commitment?

21 THE JURY: Yes.

22 THE COURT: Does anybody have any questions
23 about the process, as I've described it?

24 All right. Then at this time, I'm going to
25 read to you two stipulations. These are -- a

1 stipulation is simply an agreement of something that's
2 not going to be litigated in this case; it's not going
3 to be in dispute in this case, and so I'm going to read
4 these into evidence and then we will move on to the
5 opening statements. All right.

6 "In March 2008, the US Environmental
7 Protection Agency listed the site at issue in this suit
8 as a federal Superfund site. Since 2008 the EPA has
9 been overseeing the environmental investigation, removal
10 and remediation of the site that is being performed or
11 paid for by the defendants, as required by federal law.
12 That process is ongoing and will result in the EPA
13 selecting a method for permanently cleaning up the site.

14 "Participating in the Superfund process has
15 no bearing on whether a party is liable under the Texas
16 statutes claimed in this lawsuit. The lawsuit you are
17 here about is separate and independent of the EPA's
18 Superfund process. If any penalty payments are assessed
19 in this lawsuit, the money will not be for the ongoing
20 site remediation or ultimate cleanup. Any such money
21 will be paid into the Harris County General Fund and the
22 State of Texas General Revenue Fund. The money can be
23 used for any lawful purpose by Harris County and the
24 State of Texas.

25 "In July, 1985, the EPA listed dioxin as a

1 hazardous substance. As a result of its determination
2 that dioxin may be harmful to the public health or the
3 environment, the EPA listed the site as a Superfund site
4 in 2008, due to the presence of dioxin. The fact that
5 the EPA designated the site as a Superfund site is not a
6 factor for you to consider in this case in determining
7 whether any Texas statute has been violated."

8 Does everybody understand the stipulation?

9 All right. With that, we will proceed with
10 opening statements. Mr. Wotring.

11 MR. WOTRING: Good morning.

12 OPENING STATEMENTS

13 BY MR. WOTRING

14 Here is where we are: This is the -- not
15 probably -- this is the last time I will be able to
16 address you-all directly about what Harris County
17 believes the evidence will be in this case. So believe
18 it or not, this is supposed to be a brief thumbnail
19 sketch of the evidence, and this is a lawyer's idea of a
20 brief thumbnail sketch of the evidence.

21 It won't be the last time you-all get to
22 hear the evidence because this is not evidence. This is
23 an introduction to the evidence, kind of to set the
24 framework for what we think the evidence is and what the
25 evidence will be when you hear the witnesses from the

1 stand.

2 So we've obviously spent a lot of time on
3 this case. We have obviously put together a lot of
4 documents, and you're going to be hearing that over the
5 next few weeks as we put it on in front of you. This is
6 an introduction to that evidence.

7 So, first, we thought we would identify for
8 you where the site is that we've been talking about.
9 And the site is just north of the I-10 bridge where we
10 have the pen marked "waste pit." If you drive east from
11 here, you are going to pass it on your left; and that's
12 the aerial photograph of the site. And it is located
13 approximately 3 1/4 miles from the San Jacinto Monument,
14 if that helps you identify where this site is.

15 And that's the first aerial photograph of
16 the site that you are going to see. From time to time,
17 different agencies and different companies take aerial
18 photographs of pretty much everything, and you can go
19 back and look at the aerial photographs if you know what
20 you're looking for.

21 So here are the parties to this action.
22 It's Harris County -- Harris County is different than
23 the City. Harris County is different than the State.
24 And there are different types of agencies in the County;
25 but we represent Harris County, itself.

1 And here today on behalf of Harris County,
2 number one, is Vince Ryan. This is the County Attorney.
3 He's an elected official. We also have with us
4 Commissioner Jack Cagle from Precinct 4. The County
5 government has four different precincts and one county
6 judge. Now, that county judge is not like this district
7 judge. It's the chief person in charge of the County
8 government. So Commissioner Cagle is one of the four;
9 there are three other commissioners who are all
10 attending other business and functions today.

11 We also have with us today Bob Allen. He's
12 a director of Pollution Control Services at Harris
13 County. Mr. Allen will probably be attending a good
14 portion of the trial as Harris County's representative.
15 And I think I've already introduced Mr. Rock Owens, who
16 is the chief environmental lawyer for Harris County, and
17 Terry O'Rourke, who is one of the special assistants to
18 Vince Ryan as a county attorney. So that's Harris
19 County. We also have the State of Texas here. You'll
20 be hearing from Mr. Bennett. He represents the State of
21 Texas and he can address you directly about how he
22 handles that.

23 Then, of course, we have the defendants,
24 and the defendants in this case are International Paper.
25 We have Champion Paper, which is the historic entity

1 that you'll be hearing about. Champion merged with
2 International Paper in 2000; the two companies merged
3 together, and you'll hear evidence about what that
4 means.

5 Then you have Waste Management as a company
6 and you have McGinnis Industrial Maintenance
7 Corporation. And we're going to have to talk about the
8 corporate chain of ownership between McGinnis Industrial
9 Maintenance Corporation and Waste Management.

10 And what you heard in voir dire is that
11 these companies -- International Paper's attorney told
12 you these companies touch every product or are involved
13 in products from cups to diapers, and that they are in
14 your community and they have facilities around you. And
15 you heard from the Waste Management attorney that they
16 have facilities around you, and you heard something
17 about that from the panel members.

18 These are companies that are around us.
19 Waste Management is headquartered in this county, and
20 that's where its main base of operations is, from the
21 corporate side.

22 Briefly put, and as briefly put as I could
23 do it, here is a thumbnail sketch of the case: Champion
24 put its paper mill sludge in the San Jacinto River waste
25 pits. Harris County told them not to let the waste get

1 into the river, okay. Let me show you two documents and
2 we'll talk about them later. You'll see these documents
3 too many times from me and everybody else. There are
4 two documents that I want to show you, and then we'll
5 talk about them.

6 There are two letters -- we'll read them
7 all in a minute. There is a letter dated June 11th,
8 1965, and there is a letter of May 25th, 1965. We'll
9 read them out word-for-word, and that's probably the
10 last time I'm going to do that in this case, because I
11 think you-all only need to see it one time.

12 So Harris County told them not to let the
13 waste get into the river, and then Champion and MIMC
14 left their sludge in the waste pits and abandoned them
15 for 40 years. You've heard from the Judge the
16 stipulation that the parties agreed to, that in 1985 the
17 EPA determined that dioxin was hazardous. In the 1980s
18 Champion and MIMC knew the paper mill sludge that they
19 had generated -- that Champion had generated and that
20 MIMC had transported and had placed into the pits had
21 dioxin in it. And from 1985 forward, it was known that
22 the sludge containing dioxin was hazardous to people
23 and/or the environment.

24 Defendants didn't warn anyone about the
25 hazardous dioxin in their sludge. And you'll hear more

1 about different defendants were involved at different
2 times with the pits and the sludge, and we'll walk
3 through that later in the presentation.

4 Defendants did nothing to stop their sludge
5 laced with dioxin from getting into the river, and as a
6 result, under the Texas law, defendants are responsible
7 for the daily pollution of the San Jacinto River with
8 paper mill sludge containing the hazardous substance,
9 dioxin.

10 One of the laws that you're going to be
11 asked to look at is the Texas Water Code, and I have
12 boiled it down. This is not the exact terms, but that
13 law boiled down says "If you cause, suffer, allow or
14 permit the pollution of the waters of the State of
15 Texas," you must pay a penalty.

16 It is not about whether you own the
17 property. It is not about whether -- it's not only
18 about whether you own the property. It's not about
19 whether you only generated the sludge. It is about
20 whether you caused, suffer, allow or permit the
21 pollution of the waters of the State of Texas.

22 If that's the case, then you must pay a
23 penalty, and the penalty range is from \$50 a day to
24 \$25,000 a day. Now, because of the period of time we're
25 talking about, there are different maximums for

1 different periods of time. So early in the period it
2 may be \$50 to a thousand dollars, but in the later
3 period -- and we'll give you the specific information
4 through a witness -- it goes up to \$25,000 a day.

5 And what we've put up here, briefly, is
6 this case is not about putting the paper mill sludge in
7 the impoundments at the beginning. This case is about
8 letting it get into the water for 35 years of violation.
9 And I'm putting this calendar of all those years as a
10 reminder of that fact. It is just a sad fact of this
11 case that most of the documents we have are from early
12 in the period of time, but that shouldn't -- I don't
13 want that to detract from the fact this is about
14 35 years of violations, not the early period of time.
15 That sets the stage for the rest of the facts you'll
16 hear about.

17 Here is an aerial photo in 1964, and you
18 can see the bridge. I'm going to have to ask my -- you
19 can see the bridge. This is Highway 73, and later it
20 becomes I-10. Just north of that is the land and the
21 tract; you see it right next to the river. I think at
22 the time they described it as being in a low, marshy
23 area near the river. So before they put the pits there,
24 they put them in a low, marshy area near the river.

25 And here is the timeline: Champion hired a

1 company called Ole Peterson to barge its paper mill
2 waste to the San Jacinto pits we're talking about.
3 Harris County agreed that Champion could put the waste
4 in the pits; however, Champion was expressly warned by
5 Dr. Quebedeaux of the Harris County Health Unit that the
6 waste-handling operation should be done in a manner
7 which would not allow any waste to leave the property
8 and escape into the river.

9 Now I want to go into the two letters that
10 I talked about. The May 25th letter is from
11 Dr. Quebedeaux. Dr. Quebedeaux was, if not the first,
12 one of the first Harris County Pollution Control
13 Directors. I think he's about three guys before
14 Mr. Allen here. And he was -- well, you'll hear more
15 about him, but he was the Harris County Pollution
16 Control director and they did approach him and ask him
17 his opinion about putting the sludge pits in the river.

18 And he said -- and there are two paragraphs
19 to this letter. He said, "The location of the proposed
20 spoil pond," which we viewed yesterday, "seems to be
21 ideal for the purpose for which you intend to use it.
22 This is partially -- or particularly so, since the
23 bottom and sides or dikes are composed of clay, which
24 should render it practically impossible for seepage to
25 escape and enter into the San Jacinto River." And then

1 there is a second paragraph of this letter.

2 "I would like to remind you, again, that
3 your waste handling operation should be done in a manner
4 which would not allow any liquid waste to leave the
5 property and escape into the river. We believe this
6 could be done easily, but of necessity would require
7 some careful handling."

8 There is paragraph one and there is
9 paragraph two. And I don't believe you can fairly show
10 this letter or talk about this letter without talking
11 about paragraph one and paragraph two at the same time.

12 Now, the company went back to him and
13 wanted a more particular letter, and so that's the next
14 one I want to show you. And it's almost the same,
15 except it specifies the location of the spoil pond.
16 This is June 11th, just a few weeks later.

17 Again, the first paragraph is the same.
18 This is the last time -- I promise, I'll try to make it
19 the last time I read this thing out loud to you. "The
20 location of the proposed spoil pond, which is located on
21 the west bank of the San Jacinto River, just north of
22 the Highway 73 bridge, seems to be ideal for the purpose
23 for which you intend to use it. This is particularly so
24 since the bottom and sides, or dikes, are composed of
25 clay, which should render it practically impossible for

1 seepage to escape and enter into the San Jacinto River."

2 And then we have Paragraph 2. "I would
3 like to remind you again that your waste-handling
4 operation should be done in a manner which would not
5 allow any liquid waste to leave the property and escape
6 into the river. We believe this could be done easily,
7 but of necessity would require some careful handling."

8 I don't think we have a much better copy.
9 Maybe when you scoot it down it gets a little bit
10 better.

11 I was trying to figure out how to explain
12 to you that because of this letter, obviously it's an
13 important exhibit in the case, but I don't think you can
14 talk about the letter without talking about paragraph
15 one and paragraph two. I was going to say it's like
16 peanut butter and jelly, but it's not like a peanut
17 butter and jelly sandwich. You can have a peanut butter
18 sandwich; you can have a jelly sandwich, and you can't
19 have this letter without having both paragraphs, so it's
20 more like a Reese's Cup. You can't have a Reese's Cup
21 without having the peanut butter and the chocolate. So
22 if you are talking about this letter with one paragraph
23 and not the other, then you're talking about a Reese's
24 Cup without something that makes a Reese's Cup a Reese's
25 Cup. So you are going to hear about this letter some

1 more.

2 And, again, I want to go back to the fact
3 that this case is not about putting it in the site.
4 It's about what happened after and the failure to
5 maintain and look after the sludge for the next
6 35 years. And we'll talk about that time frame.

7 Okay. That's the two letters, the
8 June 11th letter and the earlier May 25th, 1965, letter.

9 Pretty soon in this case I think we're all
10 going to be able to tell by your eyes that we don't need
11 to read those letters any more, but I don't think we're
12 quite there yet, so we'll probably hear a little bit
13 more and I'll probably overuse those letters. But
14 hopefully I'll get to the point and move on.

15 Okay. So that's the two letters. Champion
16 entered into a contract with Ole Peterson to remove the
17 sludge and to send it to the site. And that contract
18 had some specific terms; it had a lot of terms. We've
19 excerpted some out; that's not the complete contract.

20 And one was that they were going to
21 transport the sludge off site to land acceptable to
22 Champion. Champion -- that contract required the
23 contractor, his employees, subcontractors and agents, to
24 adhere in all respects with Champion's operating and
25 safety codes and regulations. Under the contract all

1 waste disposal work was subject to coordination and
2 inspection by Champion's designated representative. And
3 Champion's contract provided that Champion's
4 representative had complete access for the inspection of
5 the work and material and equipment. And that contract
6 ran by its terms through 1971.

7 We talked about those two letters. I'm not
8 going to read them.

9 Now, what happened, and I think the
10 evidence will come in, is that Ole Peterson ran into
11 some problems with the IRS shortly after starting the
12 contract. And so Champion found MIMC, which was formed
13 by Virgil McGinnis and his brother shortly before taking
14 over this contract, and then MIMC assumed the contract
15 from Ole Peterson, and then MIMC started barging the
16 waste to the San Jacinto pits.

17 Now, in December of '65 -- so we're kind of
18 starting roughly in June of '65 and moving on toward the
19 end of that year -- Dr. Quebedeaux visited the waste
20 pits and he reminded Champion and MIMC that the approval
21 to use the ponds and the San Jacinto River was only
22 under the condition that the waste-handling operation
23 should be done in a manner which would not allow any
24 liquid waste to leave the property and escape into the
25 river.

1 And then in response, Champion, to that
2 visit, Champion did an internal memo, and I think we've
3 got that excerpted. What they said is, "I am sure we
4 all realize the sensitive nature of this entire
5 operation and the need for special precautions with the
6 disposal of this waste material."

7 There is his letter of December 28th, 1965,
8 and there are portions marked out as a result of --

9 THE COURT: Probably the easiest thing for
10 me to do at this time is to let you know there are
11 documents you will see that will have blacked-out
12 portions. Those are as a result of rulings by the
13 Court.

14 MR. WOTRING: So that has the language in
15 it. The first paragraph is very similar to the first
16 paragraph of these two letters here, very similar to
17 this language again.

18 What it says there is -- the bottom portion
19 is what you have in focus.

20 He tells you "the dikes which are being
21 used to contain the wastes should be repaired." So the
22 bottom of that says -- we'll read the whole thing and
23 then I won't have to do it again.

24 "On June 11th, 1965 a letter was written to
25 Burma Engineering in which the use of the property

1 located on the west bank of the San Jacinto River, just
2 north of Highway 73 bridge, as a spoil pond for waste
3 removal from the Champion company was approved. This
4 approval was only under the condition that the 'waste
5 handling operations be done in a manner which would not
6 allow any liquid waste to leave the property and escape
7 into the river.'"

8 And then he says "On December 27th, 1965 at
9 5:15 p.m." -- and then we move on down, "At the time
10 given above, the superintendent, Mr. Ned Chesser, was
11 notified, since I could not contact anyone at your
12 office" -- this is the letter to MIMC -- "Mr. Chesser
13 was asked to communicate to you the information that
14 within the next 24 hours that the dikes which are being
15 used to contain the wastes should be repaired." And
16 that is the December 28th letter.

17 And then we have what Champion did in
18 response to that. So Dr. Quebedeaux writes to MIMC, and
19 Champion takes action because Champion had sufficient
20 control and interest in this sludge that they wanted to
21 follow up on. There is going to be a dispute, I think,
22 between the defendants. We'll see what they have to say
23 about who owned the sludge after it was given from
24 Champion to MIMC.

25 Either way, from Harris County's

1 perspective and on the law, the language "cause, suffer,
2 allow" doesn't require anybody to own the sludge; they
3 just have to have the power to stop the sludge from
4 getting into the river.

5 And this is what Champion said in the
6 December 30th, 1965, memorandum; and I think these are
7 already in evidence.

8 Bryan, would you mind blowing up that
9 portion there? And scrolling down? Bryan and I have
10 been working together a long time.

11 It says, "Attached are a copy of a letter
12 dated December 28, 1965, relating to the disposal of
13 Champion's -- Champion's waste sludge material." And
14 then he says also -- the private memorandum says, "Also,
15 in a telephone conversation with Bob Roderick and
16 subsequent discussion with representatives of MIMC
17 Corporation, Dr. Quebedeaux pointed out the need for
18 levee repairs as follows."

19 Okay. Here is why this is important,
20 because later on we're going to get into the fact that
21 these -- these pits became submerged under the waters of
22 the San Jacinto River. And what this document shows is
23 the levees were nothing more than silt and sand with a
24 little bit of clay in them, and that as a result of the
25 way they were built and as a result of the failure to

1 maintain them or go back out to the site, the waste
2 paper mill sludge containing dioxin got out every day.
3 And this is one of the few pieces of information we have
4 about what actually the levees were made of.

5 If we scroll back up -- and that's the end
6 of the memo. I know sometimes the whole document is
7 into evidence, except some portions that have been taken
8 out, and you'll have a chance to see the whole document
9 and to put it in context. And I want to point out the
10 bottom paragraph for you. It says that, "I am sure we
11 all realize the sensitive nature of this entire
12 operation and the need for special precaution in
13 connection with the disposal of this waste material."

14 At the time, they knew that they needed --
15 that there was a sensitive nature of the operation and
16 they needed to take special precaution in connection
17 with the disposal of the waste material. That's what
18 they knew at the time. That's what they put in their
19 internal memo.

20 In May, the State Department of Health
21 investigated Champion's waste disposal practice at the
22 site and they identified seepage and problems with the
23 levees. It's a very long document. There is a lot of
24 information in it, and for -- it talks about whether the
25 dikes would be subject to flooding; it talks about

1 whether they would be affected by storms. And that is
2 another one of the documents you're going to hear about
3 in this case.

4 And then July 14th, 1966, Champion had its
5 own internal documents which showed that it knew that it
6 was polluting the San Jacinto River site, but it did not
7 tell the public or the government about that fact. The
8 exact quote, and I'll put the document up in a minute,
9 is, "Champion told its management that 'because of the
10 pollution problem, it is impractical to consider further
11 dumping at the present location on the San Jacinto
12 River.'"

13 Here is that document, and that's the quote
14 pulled out from it. That's an internal Champion
15 document from July 14th of 1966, which says, "Because of
16 the pollution problem, it is impractical to consider
17 further dumping at the present location on the San
18 Jacinto River."

19 So if I go back, what we know -- what they
20 knew at the time was, "We all realize the sensitive
21 nature of this entire operation and the need for special
22 precaution in connection with the disposal of this waste
23 material." And then July 14th, 1966, it states, their
24 memo states, "Because of the pollution problem, it is
25 impractical to consider further dumping at the present

1 location on the San Jacinto River."

2 I don't believe there will be any evidence
3 that any action was taken in response to this memorandum
4 by Champion. I don't believe there will be any evidence
5 in this case admitted that Champion informed anybody at
6 Harris County that they knew they had a pollution
7 problem at the site on the San Jacinto River. I don't
8 believe there will be any evidence that Champion did any
9 follow-up as a result of this memorandum to do anything
10 about the pollution problems they identified in their
11 internal document on July 14th, 1966.

12 That's the pits as of 1966. So here is the
13 river (indicating) and here is the highway bridge, and
14 here they are outlined. Let me take a brief moment to
15 describe the pits to you and something else about this
16 case.

17 We believe there are three pits. Here is
18 one pit. Here is another pit (indicating).

19 Bryan, can you blow that up? Thank you.

20 And here is a third pit (indicating). And
21 that for different periods of time, each one of those
22 pits was releasing into the San Jacinto River and there
23 should be a penalty assessed for each pit. They built
24 the site up to contain their paper mill sludge, the
25 sludge that they produced by the tens of thousands of

1 cubic yards each year. They needed a place to put it so
2 they could keep their mill operating; and they should
3 pay a penalty for the expanding operations at this site
4 for each one of the three pits.

5 MIMC got paid by how much sludge they sent
6 to the site. They sent it to three different pits, we
7 believe the evidence will show; and that as a result,
8 they are also liable for three different penalties per
9 day.

10 Now, we're going to get to Waste Management
11 and Waste Management's connection with this case, so
12 we're not forgetting about them. That is just a little
13 bit later in the presentation.

14 That's the close-up of the pits. So now
15 we're going back -- we're going forward. The last date
16 was July 14th, 1966. Now we're moving two years ahead,
17 two years ahead; and MIMC convened a board of directors
18 meeting and voted to abandon the waste pit site, and
19 they paid themselves a bonus. So this document is a
20 board of directors minutes. And I wasn't too familiar
21 with these types of documents before -- before this
22 current job. This is a way a company makes a decision.

23 A company is an entity, and it has to make
24 decisions and it has to record its decisions. So when
25 the board of directors get together, it's like the brain

1 of the company getting together, and this is a record of
2 what the company decided to do.

3 So you can see it's August 19th, 1968, is
4 the date. This whole document is in evidence. There
5 are excerpts. So one of the things they did on
6 August 19th of 1968, was they give themselves a bonus.
7 It looks like a significant sum of money now. I'm sure
8 it was a much more significant sum of money in August of
9 1968.

10 And then they did something else, and this
11 is the record of what they did. It said, "Discussion
12 then turned to certain real estate owned by the
13 corporation on the San Jacinto River, which was used
14 during fiscal 1966 and part of fiscal 1967 as a dump for
15 waste materials hauled by the corporation."

16 The chairman stated that during a
17 conference with the corporation's auditors the physical
18 status of the property was discussed. It was pointed
19 out that the property was completely filled with waste
20 materials and could no longer serve as a dump site. In
21 other words, "We can't make any more money from this
22 site, because it's full." They didn't quite say it like
23 that. They said, "Due to its physical condition it was
24 also regarded that the land was worthless in that it had
25 no present sales value."

1 And, "Because of these factors, the
2 corporation's auditors were instructed to eliminate the
3 land as an asset of the corporation's books and records
4 by writing down its stated book value from \$50,000 cost
5 to the nominal sum of \$1. This action would be
6 reflected in the corporation's balance sheet as of
7 August 31, 1968."

8 "Based upon the foregoing -- "Based on the
9 foregoing and upon motion duly made, seconded and
10 unanimously approved, it was" -- and here is what they
11 resolved to do. This is what the company decided to do,
12 "that the real estate owned by this corporation on the
13 San Jacinto River, previously used as a dump site in
14 connection with corporate hauling activities, be
15 abandoned as a dump site."

16 They had been told by Dr. Quebedeaux in
17 those two letters and in December that they should
18 conduct their operations so as to not let the liquid
19 waste leave the site, and here they are in August of
20 1968 abandoning the site. And I don't believe you'll
21 hear any evidence that they went back to the site after
22 1968, that they maintained it, that they inspected it,
23 that they did anything to prevent it from going under
24 the waters of the San Jacinto River, with the waste
25 paper mill sludge that they had been paid to place

1 there.

2 Now, the land, itself, appears to have been
3 in the title of Virgil McGinnis, one of the shareholders
4 of the company. He had a deed, and it said it was in
5 trust. It doesn't say who it was in trust for, but the
6 record title says it's in the name of Virgil McGinnis.
7 But these are the company records. Virgil McGinnis'
8 company records showing that it was owned by the
9 corporation and the corporation certainly had access and
10 control over that property.

11 Here is the site in 1970 (indicating).
12 This is the site where they placed the paper mill
13 sludge, and in 1970 it's underwater. And I don't
14 believe you're going to hear any evidence that anybody
15 went out to maintain it, to inspect it, to make sure
16 that the paper mill sludge stayed out of the waters of
17 the San Jacinto River.

18 Again, these aerial photographs are taken
19 of the entire area; they're not particularized on this
20 area. After things started on this site, people went
21 back and found the aerial photographs; but you can find
22 aerial photographs of almost the whole Gulf Coast for
23 different periods of time. So nobody was looking in the
24 1970s at these pits. We went back later and found the
25 aerial photographs, and here they are. It's underwater.

1 So from 1968 to 1992, we don't believe MIMC
2 or Champion did tell the public or the government that
3 they had intentionally abandoned the pits full of
4 hazardous waste by the San Jacinto River.

5 You've heard the stipulation of the
6 parties, the statement that they agreed to, agreed to,
7 that the EPA listed dioxin as a hazardous substance in
8 July of 1985.

9 And then in March of 1988, the EPA now, the
10 EPA did a study on paper mill sludge in conjunction with
11 the industry, and they found that the paper bleaching
12 process was responsible for the formation of dioxins in
13 the effluent. Effluent in this case means water and
14 sludge.

15 So the companies didn't go back at any time
16 and determine what was in the sludge that they were
17 producing by the cubic yard, by the tens of thousands,
18 each year. The EPA did a study in conjunction with the
19 industry, and in March of 1988 they issued the 5 Mill
20 Study confirming that the pulp-bleaching process was
21 responsible for the formation of dioxins. That's where
22 we are in our period of time on the daily releases,
23 1988.

24 Now, after 1988, Champion didn't go back
25 and say, "Wait a minute, we've got this study from the

1 EPA and it shows we have dioxin in our sludge, we should
2 go back and find out if we have a sludge pit on the
3 San Jacinto River, like we know we do, and do something
4 about it."

5 I don't think there is any evidence, and I
6 don't believe it happened, that Champion went back and
7 did anything with the sludge pits after the 5 Mill Study
8 and after the follow-up study, which is called the 104
9 Mill Study. That's the 104 Mill Study which came out
10 after the 5 Mill Study in the 1988/89 time period.

11 Now, I'm shifting back a little bit to
12 MIMC. MIMC had been in operation from the formation
13 prior to 1965, and by 1992 it decided to sell itself to
14 a company called GCE. There are a few more companies
15 I'm afraid I have to talk about. There is no way around
16 it, but it won't be the last time we're able to put this
17 evidence in front of you.

18 So MIMC decided to sell itself to a company
19 called GCE, and then it disclosed in writing to the
20 people it wanted to sell itself to -- kind of like when
21 you are selling your house you would be disclosing on
22 the form a problem with your house so the buyer would
23 know about it -- MIMC disclosed in writing, to its
24 owners that it disposed of waste in the pits and that
25 sale was worth millions of dollars.

And this is that disclosure letter. It's to a man called Tom Fatjo at GC Environmental. The date is January 30th, 1992. And this language, I'm going to sum it for you, it says what it says. This is in evidence. "These are what we're disclosing, pursuant to our agreement to disclose to you material facts about our company prior to receiving the purchase price for our company." It's signed by Lawrence McGinnis and Virgil McGinnis and Billie Doris McGinnis, the shareholders of McGinnis Industrial Maintenance Corporation, or the owners.

And what they disclosed to GCE in 1992 was this paragraph that "The Company owns land adjacent to the San Jacinto River and Interstate 10 which, at one point was used for certain of the waste disposal activities of the Company."

They didn't forget that they owned this land. They didn't forget they had operations on this land, and they didn't forget what they did with it.

In fact, when they were going to get millions of dollars for selling their company, they wanted to make sure the buyer knew about it and they disclosed that up front, but they didn't tell anybody else.

And they also knew something else about

1 this land, and here's what they said: "With respect to
2 such land, the Company has received no notice regarding
3 a pending or threatened liability or administrative
4 action under any Environmental Laws and, accordingly, no
5 liability has been accrued on our Audited Financial
6 Statements or the Interim Pro Forma Financial Statements
7 therefor. It should however be noted that due to the
8 expansive nature of Environmental Laws, the Company may
9 at some point incur a liability under the Environmental
10 Laws with respect to such land."

11 They haven't forgotten about the land.
12 They knew that "due to the expansive nature of the
13 Environmental Laws," the Company could at some point
14 incur a liability under the Environmental Laws with
15 respect to the land. And this is in 1992.

16 You're not going to hear any evidence in
17 this case that MIMC went back to the site in 1993 or '94
18 or '95, or on through the end of the penalty period in
19 March of 2008, to do anything with respect to this land.
20 They didn't inspect it. They didn't maintain it. They
21 didn't warn anybody about it. They didn't do anything
22 about it.

23 Again, I'm putting this up as a pictorial
24 reminder that this case is not about putting it in the
25 pits. That sets the stage factually for what we're

1 talking about. This is about the daily release of
2 sludge containing dioxin during all those years, and I'm
3 excerpting out '91 and '92 because that's when they were
4 selling their company, that's when they were writing
5 letters to the buyer, and that's when they were getting
6 millions of dollars for it.

7 So we're putting information in different
8 forms. Some people like it written down on a page.
9 Some people like pictures. Some people like it both
10 ways. What they tell us is, different people assimilate
11 information differently. We've got a picture here.

12 MIMC was incorporated in 1965. And it's
13 the -- MIMC, it's an interesting name -- McGinnis
14 Industrial Maintenance Corporation. Then it was -- the
15 stock, the stock, was purchased by GC Environmental in
16 1992. And then GCE Environmental was purchased by Waste
17 Management in January of 2003. And then GCE
18 Environmental merged with Waste Management of Texas in
19 December of 2003.

20 There is no more GC Environmental to sue.
21 GCE Environmental, as of 1992, had a hundred percent
22 ownership of the stock of MIMC, and with that had a
23 hundred percent control over MIMC, and could have and
24 should have stopped the ongoing releases of dioxin from
25 the San Jacinto River during that entire period of time.

1 And then when they merged into Waste Management of
2 Texas, Waste Management of Texas had a hundred percent
3 ownership of the stock of MIMC and could have and should
4 have stopped the ongoing releases from 2003 through
5 2008.

6 What the evidence is going to show in this
7 case is that as of 1994, MIMC had no employees, no
8 revenue, and no operations. It was sold for millions of
9 dollars, and two years later there is no employees, no
10 revenues, and no operations. Different periods of
11 time -- and we'll put the evidence on -- the directors
12 of MIMC and the directors of Waste Management of Texas
13 were identical. The officers of MIMC and the officers
14 of Waste Management of Texas have been identical at
15 different periods of time.

16 And currently, MIMC has no chief operating
17 officer, no chief executive officer, no income and no
18 separate offices from Waste Management of Texas. It
19 truly is a mimic.

20 A different timeline, different set of
21 companies. In 2001, International Paper merged Champion
22 into it. And what you are going to hear from the
23 evidence in this case is, and that I think was touched
24 upon by counsel for International Paper was, that deal
25 went so fast, they didn't do any due diligence. They

1 wanted to merge with that company so much that they
2 didn't do any due diligence to look into where and
3 what Champion had placed in the sludge pits on the
4 San Jacinto River.

5 And I think you're going to hear their
6 attorney say, "Well, we didn't know." Well, if you buy
7 a company and you buy another paper company and you're a
8 paper company that touches products all around us, from
9 products of everything that comes into us, that comes
10 out of us, then you should know that, if you are buying
11 another paper company, about the sludge pits that you
12 are purchasing as part of that company.

13 So this timeline starts because in 2005,
14 Texas State officials identified astronomically high
15 levels of dioxin in the San Jacinto River by the I-10
16 bridge. By that point, dioxin had already been declared
17 as a hazardous substance in 1985 by the EPA. And then
18 as a result of its determination that dioxin may be
19 harmful to the public health of the environment, the EPA
20 listed this site as a Superfund site due to the presence
21 of dioxin in 2008, shortly before the end of the penalty
22 period. The penalty period in this case runs from
23 February 15th of 1973 through March 30th of 2008.
24 That's -- and that's the last 10 years of the penalty
25 period.

1 This is just a brief graphic about how the
2 merger operated between International Paper and
3 Champion. There was actually another company called
4 Condor that was part of that merger, and we'll get into
5 that detailed story through a witness called Joan Meyer.

6 Here are the factors that we think you
7 should consider. Of course, you can consider the
8 evidence, because that's your sole province of what
9 evidence you consider and what evidence you believe; but
10 here are the factors that Harris County thinks the
11 evidence will show that should be considered in
12 determining the penalty of this matter.

13 MIMC knew it was not supposed to let liquid
14 waste leave the pits. It purposely voted to abandon the
15 site and walk away. It benefitted financially from
16 walking away by not taking care of the sludge that had
17 been placed on the side of the river. It did nothing
18 about the waste pits after 1985, when the EPA designated
19 dioxin as being hazardous. It did nothing about the
20 waste pits after 1988, with the studies of dioxin being
21 in the wastepaper sludge.

22 And I don't think you're going to hear
23 evidence that MIMC had any other site to be dealing with
24 other than the site we're here about. So it did nothing
25 after the EPA determined that there is dioxin in paper

1 mill sludge. And as we've seen from the letter in 1992,
2 MIMC knew that the property was subject to environmental
3 laws but did nothing and that, as a result, waste
4 silently released for more than 35 years into the
5 San Jacinto River.

6 Now, I do want to make something clear.
7 This will not be a case in which Harris County is
8 bringing people who have personal injuries or property
9 damage. This is a case about civil penalties, because
10 if you have violated the laws of this State and caused,
11 suffered, allowed the pollution of the waters, then you
12 should pay a penalty ranging from \$50 to \$25,000 a day,
13 at different times. And you should pay that penalty
14 because if you are causing, suffering, allowing the
15 pollution of the waters of the State of Texas, then
16 being involved in the Superfund process is not all that
17 you should be involved in. And the State law requires a
18 penalty be paid every day for a release into the water.

19 MIMC says it should pay zero dollars for
20 zero days. A factor to consider about Champion and
21 International Paper: Champion was told not to let
22 liquid waste leave the pits. Champion continued to own
23 the sludge after delivering it to MIMC. Champion
24 remained silent as waste ponds containing its dioxin
25 waste were engulfed by the San Jacinto River. Again,

1 1985, the EPA had determined that dioxin was hazardous.
2 By 1980 Champion had to know that the dioxin was in its
3 sludge, and then Champion and IP remained silent during
4 this period of time.

5 For more than 35 years, IP, International
6 Paper, caused, suffered, allowed and permitted its
7 dioxin to release into the San Jacinto Er, and the law
8 provides for a fine for every day of that release.
9 Champion Paper's position is zero dollars for zero days.

10 Here's the factors to consider for GCE, the
11 company that originally purchased stock in MIMC. It
12 obtained complete control over MIMC in 1992. You're not
13 going to hear about it having any other properties. And
14 prior to the transaction, MIMC disclosed to GCE about
15 the site and potential for environmental liability due
16 to the expansive nature of the environmental laws. It
17 did nothing to stop the release of sludge. GCE bought a
18 company for millions, and by two years later, it was not
19 a going concern.

20 Here's the factors to consider about Waste
21 Management: Waste Management of Texas merged with GC
22 Environmental in 2003, did nothing about the site, had
23 complete control over MIMC, failed to warn the public in
24 the County where it has its headquarters. I think the
25 position it's going to take in this case is it does not

1 have to know what it buys.

2 It allowed dioxin to release every day
3 since it took control of MIMC in 2003. We believe --
4 Harris County believes that it's also responsible for
5 GCE's conduct. The law provides for a fine every day of
6 the release, and Waste Management of Texas says it owes
7 zero dollars for zero days of releasing dioxin. Zero
8 dollars.

9 I think the other evidence that the counsel
10 for the defendants are going to discuss is what Harris
11 County knew, and I have showed you the letters about
12 what Harris County knew. And we will not take a
13 position that Harris County did not know that this
14 sludge was in the pits in '65 and '66. I don't believe
15 they can show any evidence that Harris County knew that
16 MIMC had abandoned this site and had failed to follow
17 Dr. Quebedeaux's instructions that they not let liquid
18 waste get into the San Jacinto River.

19 You will hear a lot of evidence about
20 dredging in and around the site. It's on the
21 San Jacinto River. They have to dredge the river to
22 make it navigable for commercial boats and barges.
23 There is going to be evidence about dredging and
24 notification to Harris County about dredging, and that
25 dredging may have gotten into the impoundments.

1 But during the period of time in which
2 there might have been dredging into the impoundments,
3 there is no evidence that MIMC, Waste Management, GC
4 Environmental, Champion or International Paper said to
5 any people, "Wait a minute. Don't dredge. We have our
6 sludge pits in the area," because they didn't continue
7 to maintain or inspect their sludge pits with their
8 sludge on the sludge pits that they made.

9 I think you're going to hear a discussion
10 between -- an interesting discussion between
11 International Paper and MIMC about who owned the sludge.
12 International Paper takes the position that they didn't
13 own the sludge after they gave it to MIMC; and MIMC
14 takes the position in this case, "We didn't own the
15 sludge. All we did was -- you paid us to haul it."

16 Again, we don't think the law permits you
17 to escape liability, whether you claim you owned it or
18 didn't own it. It's whether you caused, suffered,
19 allowed, or permitted the pollution of the waters of the
20 State of Texas. And I think if you listen carefully to
21 the presentations you are about to hear, you are going
22 to hear some version of, "Not our responsibility, not
23 our problem."

24 This is a reminder of why we think the
25 Texas Water Code imposes liability. "If you cause,

1 suffer, allow or permit the pollution of the waters of
2 the State of Texas, you must pay a penalty under the
3 law."

4 Okay. Here is a forecast of who the
5 witnesses we're going to bring to the stand. And I put
6 up there "may change" because I want to be zealous of
7 your time and not bring more witnesses than we need to
8 bring. And depending upon how testimony comes in, we
9 may change the lineup of witnesses. I think, shortly,
10 however, you are going to hear from Dr. John Pardue,
11 he's an environmental engineering professor at LSU, to
12 talk to us about how we know that dioxin -- that sludge
13 containing dioxin got out every day from February 15th
14 of 1973 through March 30th of 2008.

15 You are going to hear from Dr. Phil
16 Bedient, a hydrology professor from Rice University, who
17 will also discuss how we know that sludge containing
18 dioxin got out every day from February 15th of 1973
19 through March 30th of 2008.

20 We have brought in Joan Meyer to describe
21 in detail the corporate transactions between Waste
22 Management of Texas and MIMC, and GC Environmental and
23 MIMC, and International Paper and Champion and to
24 calculate the penalties. And we're going to present
25 evidence from the defendants' various corporate

1 representatives about what they knew and didn't know
2 with regard to the events this lawsuit is about.

3 You're going to hear more about Dr. John
4 Pardue's qualifications later from him on the stand. I
5 just wanted to sketch them out for you here.

6 Here is Dr. Phil Bedient's qualifications.

7 They're going to talk real briefly about
8 the waste material in the pits, how the failure to
9 maintain the levees resulted in a breach in the levees
10 starting in 1973, and that how by mid 1989, 14.05 acres
11 of the site of the 20 acres were submerged below the San
12 Jacinto River, and how that contamination from 1973
13 continued to release daily for the next 35 years.

14 That's the picture from 1973, where you can
15 see a breach in the berms. It is located right here
16 (indicating). I think we'll be able to get you a better
17 copy. From that day on, you can see the waters from the
18 San Jacinto River are able to flow in and out of the
19 impoundments. And this is the waters around the San
20 Jacinto River.

21 By the way, in the history -- in one of the
22 documents, the best description we have of this material
23 is it's a cheap grade, or cheaper grade of cardboard,
24 like egg cartons. That's how it was described in 1966,
25 a cheaper grade of carton, like an egg carton. I think

1 they must mean the cardboard cartons, not the current
2 ones.

3 It's the defendants' position from their
4 experts, and I think you'll hear the evidence from the
5 stand on this, it is their position that this cheaper
6 grade of cardboard, like an egg carton, did not release
7 into the San Jacinto River, but remained physically
8 intact in these impoundments for the entire 35-year
9 period of time we're talking about, and that if there
10 were any releases, the only releases came as a result of
11 dredging.

12 I believe you're going to hear evidence
13 from one of their experts who told me that he couldn't
14 tell me any more specifically about what this material
15 was, because I questioned him about that. And he said,
16 "Well, I can't. I said, "You are not saying it's like
17 concrete, are you?" He said, "No, I'm not saying it's
18 like concrete." I said, "Well, between a cheap grade of
19 cardboard and concrete, what would you say it's like?"
20 He couldn't be more specific.

21 So it's going to be the defendants'
22 position, I believe, from the evidence they're going to
23 put on the stand, that this material was something
24 between a cheap grade of cardboard and concrete that
25 withstood wind, water, tides, hurricane and flood for

1 35 years and never released into the San Jacinto River.

2 I don't think I need to say much more about
3 that.

4 One of the pieces of evidence in this case
5 is a surveyor's report that came from June of 1989. And
6 this is basis of Dr. Pardue and Dr. Bedient's opinion
7 that the site was underwater, if I haven't done a good
8 job of explaining this.

9 Here is the roadway and here is the site as
10 of 1989 (indicating). Now, you'll remember it doesn't
11 look like the site looked when they first put it there,
12 because this portion here is underwater. That's the
13 surveyor's report from mid 1989, showing that 14.05 and
14 portions of all three of the pits were underwater, were
15 underwater every day thereafter.

16 And, yet, it is defendants' position in
17 this case that none of the paper mill sludge containing
18 dioxin got out into the water, because this cheap grade
19 of cardboard that is something between cheap cardboard
20 and concrete withstood the water, the wind, the rain,
21 and the tides for decades. If you have ever put a box
22 in your yard in Houston, a good cardboard box in your
23 yard in Houston, you know how long it stands up to the
24 humidity in the air.

25 There are three different statutes that

1 we're suing under: The Texas Water Code, the Texas
2 Solid Waste Disposal Act, and the Texas Spill Act, three
3 different environmental statutes. They each have
4 different requirements, and we'll explain each of those
5 in more detail, but I do want to sketch those for you
6 now.

7 The Texas Water Code states, "If you cause,
8 suffer, allow or permit pollution of the waters of the
9 State of Texas, you have to pay a civil penalty of
10 between \$50 to \$25,000 for each day that waste is
11 discharged." The decision about how much per day is
12 your decision. It is the jury's decision about how
13 much, between \$50 and \$25,000 a day should be imposed
14 for this conduct.

15 Harris County has asked for the maximum
16 amount of penalties, but it will be your decision about
17 what penalty to grant and how many days.

18 The next statute that Harris County is
19 suing under is the Texas Solid Waste Disposal Act. And
20 it states "If you cause, suffer, allow or permit
21 disposal of industrial solid waste in a manner as to
22 cause a discharge or imminent threat of discharge into
23 or adjacent to the waters of the State of Texas" -- this
24 one has got a little bit different requirement -- "into
25 the waters or adjacent to the waters of the State of

1 Texas, you have to pay a civil penalty of between \$50
2 and \$25,000 for each day the waste is discharged."

3 Let me remind you, during the earlier
4 period of time, it's not \$25,000, it's a thousand
5 dollars and then it moves to \$5,000, and then to \$10,000
6 during different periods of time. That's why we're
7 bringing Ms. Meyer here, to explain that to you from the
8 stand about what the penalties were during the different
9 periods of time, because we're talking about a period of
10 time of 35 years.

11 The final statute that we think has been
12 violated is the Texas Spill Act. "If you do not
13 immediately undertake all reasonable actions to abate
14 and remove a discharge or spill of hazardous
15 substances" -- remember, the EPA designated dioxin as a
16 hazardous substance -- "you have to pay a civil penalty
17 between \$50 a day and \$25,000 for each day discharge
18 occurs."

19 If you piled all of the days together and
20 all of the maximum penalties together, this would be the
21 maximum penalties that you would award against Champion
22 and International Paper. That's a \$1.591 billion in
23 penalties, the same amount from MIMC, \$1.591 billion,
24 and for Waste Management of Texas it would \$698 million
25 for statutory penalties and violations.

1 It also -- the Texas Water Code also
2 permits Harris County to recover its reasonable
3 attorney's fees. In this case, since 19 -- since 2011,
4 my firm has incurred over \$10 million in work on this
5 case. We have a contract with Harris County. That
6 contract permits us to recover up to a capped amount, a
7 portion of the civil fines and penalties. So there are
8 two things: We recover up to a capped amount, and we
9 can talk about that in more detail and Ms. Baker is
10 going to get on the stand and explain that, of the civil
11 fines and penalties, number one; number two, that also
12 means since 2011 we have been working on this case and
13 we have not been paid.

14 The last thing I want to do is just walk
15 you through the aerial photographs of this site. And
16 what the evidence will show from these aerial
17 photographs is we're going to go from 1962 on forward in
18 time, and you will see the development of industry and
19 neighborhoods around this site. And for each one of
20 these in 1973, it is defendants' position that they
21 should pay not one dollar for one day for violating any
22 of these statutes, and that despite what you see on the
23 screen, despite what you see in your eyes, none of the
24 paper mill sludge containing dioxin ever got out of
25 these pits until there was some dredging sometime in, I

1 don't know, the '70s or the '90s.

2 In 1974, it is still defendants' position
3 that they should pay not one dollar for one day of
4 violation of any of the statutes that we put up on the
5 screen because none of the dioxin got out of these
6 impoundments. In 1978, we're starting to see more
7 industry and more development around the site. In 1978,
8 another picture. And despite what you see on the
9 screen, it is still defendants' position that this
10 substance, which was a waste product from making paper,
11 remained intact in these impoundments, despite what you
12 see on the screen.

13 There is a close-up of 1978, 1979, 1981.

14 It's Harris County's position that every
15 day after February 15th of 1973, paper mill sludge
16 containing dioxin was releasing into the San Jacinto
17 River. 1985, 1995, 2005. And that there had been
18 35 years of violations of the Texas environmental
19 statutes. And for that, these defendants should pay
20 civil fines and penalties.

21 So that's the thumbnail sketch of our case.
22 We understand how valuable your time is, and we're going
23 to try to put on an efficient case. We appreciate your
24 time and your service, and I'll sit down now and
25 conclude our opening.

1 THE COURT: Thank you, Mr. Wotring.
2 Mr. Benedict.

3 Then, ladies and gentlemen, after this
4 opening, we'll take a break.

5 OPENING STATEMENT

6 BY MR. BENEDICT

7 Thank you, Your Honor.

8 Good morning.

9 THE JURY: Good morning.

10 MR. BENEDICT: It's been a few days since
11 the voir dire, so I'll reintroduce myself. I'm Tony
12 Benedict and I represent the Texas Commission on
13 Environmental Quality, and if Ms. Secord could stand up,
14 she may be here at the trial and she represents the
15 Texas Commission on Environmental Quality. We're
16 assistant attorney generals in the Environmental
17 Protection Division of the Texas Attorney General's
18 office. Been a long time. We work for the State of
19 Texas.

20 I'm going to do something right now I
21 suspect you did not think any of the lawyers would say
22 when they walked into the courtroom this morning, and
23 that is, "I'll be very brief." I'm not especially sure
24 lawyers are allowed to say that, but I will be brief
25 this morning.

1 As we explained in voir dire, the Texas
2 Commission on Environmental Quality is when local
3 governments file a suit under certain state laws, we're
4 a necessary and indispensable party. Long word; it
5 means we have to be here.

6 And as the stipulation from the Court came
7 in this morning, if a civil penalty is awarded, the
8 TCEQ -- that's the short for the environmental agency --
9 splits the penalties with Harris County. That's
10 required by statute. And so that's why we're here and
11 we'll be participating. The TCEQ is the primary
12 environmental agency for the State of Texas, and that's
13 why we're here.

14 I'm not going to be going through a summary
15 of evidence because I don't anticipate, like Mr. Wotring
16 did or that I expect the defendants will do later on,
17 because we're not going to be putting on a long case. I
18 don't intend to sponsor a lot of evidence or documents.
19 There might be something, but I don't anticipate a lot,
20 so I'm not going to go through that long summary.

21 But there is something I do need to talk to
22 you about. And Mr. Wotring mentioned attorney's fees
23 for Harris County. Like Harris County, the statute
24 provides for the State of Texas, TCEQ, to recover its
25 attorney's fees. I don't want to dwell on that because

1 that's not a major part of the case, but I wanted you to
2 understand and have that on the table up front, that the
3 TCEQ will be asking to recover a reasonable attorney's
4 fees. It is up to the Judge -- you know, the
5 circumstances, when we're allowed to recover and not,
6 those are issues for the Judge; but you may be asked to
7 decide what is a reasonable amount.

8 And the TCEQ will bring in a witness,
9 Mr. Mark Walters. He's from our office. He's an
10 experienced attorney. He has worked for the Assistant
11 Attorney General's office, but also in private practice,
12 and he'll explain to you what he believes a reasonable
13 attorney's fee is.

14 I'm not going to go into that evidence in
15 detail. We'll let Mr. Walters do it; he can do a better
16 job than me because he's the expert. But it will be
17 based upon the actual hours of time by the Assistant
18 Attorney General in the case, and whether he thinks
19 those are reasonable and also an hourly rate, called the
20 billable hour rate for lawyers, but it's an hourly rate
21 based on what he feels is reasonable.

22 Enough of that. I just wanted to get that
23 out up front, because we're going to be talking about
24 that. And that's really all I have to say. I told you
25 I would be brief.

1 What you are doing, serving on a jury, is
2 important; and I do want to thank you very much for
3 taking the time to participate.

4 THE COURT: Thank you, Mr. Benedict.

5 All right, ladies and gentlemen, we're
6 going to take a ten-minute break and we'll proceed with
7 the rest of opening statements.

8 (After a break, the jury was present and
9 the following proceedings were had:)

10 THE COURT: Please be seated.

11 One of the things I meant to explain to
12 you, just from a technical standpoint, is sometimes when
13 we start, if we're starting with the projector, things
14 may show up on your individual screens, like they do on
15 mine and the witness's, before it comes up on the big
16 screen. Okay.

17 You may proceed, Mr. Carter.

18 MR. CARTER: Thank you, Your Honor.

19 OPENING STATEMENT

20 BY MR. CARTER

21 Good afternoon.

22 THE JURY: Good afternoon.

23 MR. CARTER: We've had some interesting
24 admissions this morning about this case. Now, I was
25 taking notes; and, of course, your collective memory may

1 be better, and we'll have a record of it later, but my
2 recollection is, is that the County's position now in
3 this case is that nothing happened that they're
4 complaining about during the initial operation back in
5 1965 and 1966.

6 Their first claim that they say that they
7 are making is a release in 1973, 7 years after the
8 contract, after the disposal operations ended in
9 May 1966. That's very important. That's very
10 important.

11 Nothing about this case is about the
12 operation, itself, the disposal operation, is what the
13 County has said. What this case is about is about the,
14 as they put it, the failure to maintain after the waste
15 went into the disposal site; and that failure to
16 maintain, according to them, started February 15, 1973,
17 when they say the first release occurred.

18 They also said it's not about putting this
19 into the pits. Another statement, this case is not
20 about putting the material into the pits; but every day,
21 they say, every day -- and we're going to hear the
22 evidence about that -- every day after 1973 releasing
23 material into the San Jacinto River. That's their
24 position. The evidence about that is going to be
25 different.

1 Now, sitting here listening to the
2 government's case, when you follow all of the existing
3 government rules that were in effect back in 1965 and
4 1966, you admittedly get the government's approval, not
5 only for the method by which the disposal was going to
6 happen, not only do you get the chief environmental
7 officer on March 5th, 1965, to make an approval of this
8 site after his personal inspection of the site, he then
9 states that the location is ideal for the purposes for
10 which it's intended. And we're going to look back at
11 those letters. And then he writes a second letter
12 approving the operation.

13 The Government, the chief environmental
14 officer for Harris County was all over this; and it was
15 all over this because he had the approval. And we're
16 going to talk about that some more in a minute.

17 We have evidence here -- and let me say
18 this: What you're hearing a lot about is going to be
19 what we call "lawyer talk," and that's in this period of
20 time that's opening statement and in the final argument.
21 You're going to see these documents. But what you're
22 not going to hear from are any people involved in this
23 operation on anybody's part. Dr. Quebedeaux died back
24 in 1978. None of the people with Champion that were
25 involved here -- you're not going to hear any witness

1 | **testimony.**

2 We're now 50 years, 50 years afterwards.
3 The people involved here are long gone. So the only
4 thing you're going to have are documents. And you're
5 going to need to look at those documents and interpret
6 those documents based upon what they say, not what some
7 lawyer says about that. And we'll be talking about
8 those documents throughout the case.

9 But let's get some basic understanding here
10 about this case, and these are very important points.
11 These are what I call the keys to the gate.

12 IP is part of the solution through the
13 Superfund process to a situation that it did not create,
14 and I'm speaking of International Paper here, that it
15 did not create. And let me read back to you just a
16 couple of statements that Judge Baker read this morning.
17 And they're very important here, folks, because what
18 we're dealing with here are specific statutes that the
19 County is claiming that we violated.

20 And those statutes have specific words in
21 them, and each word in those statutes is very important.
22 And the instructions that Judge Baker will give you at
23 the end of the case concerning those statutes is very
24 important.

25 I find it surprising -- and we'll get to

1 this shortly -- but I found it surprising that the
2 County would not show you the precise language in their
3 opening statement about the statutes that they are
4 claiming we violated. And we're going to talk about
5 that, because the language of these statutes is
6 important.

7 The reason language is important,
8 especially when you're trying to punish a company for
9 50 years and recover \$1.6 billion, part of which is
10 going to go to the lawyers and part of which is going to
11 go into the general fund of Harris County and the State,
12 is that you need to understand what the rules are. You
13 need to understand what the violations are.

14 Let me give an example. 5:00 o'clock
15 traffic. We're going down the highway. We stop.
16 Traffic is backed up. Someone comes in, fails to stop
17 and we get into a chain collision accident. It
18 happens -- it happens frequently.

19 The Superfund process, as it's been
20 described here by Judge Baker, is involving the
21 environmental investigation and remediation of the site
22 that is being performed or paid for by the defendants,
23 as required by federal law. When this accident happens
24 on the Southwest Freeway at 5:00 p.m., a chain
25 collision, several cars involved, the -- there is the

1 claims being involved with the property damage. The
2 insurance companies sort that out. But a Harris County
3 Sheriffs Deputy comes on the scene -- and remember,
4 we're stopped in our car and it's not Deputy Loya, but
5 we're stopped in our car and he gives us a ticket for
6 speeding when we're stopped in our car, okay.

7 This lawsuit is not about the remedies for
8 getting your car fixed, going through the insurance
9 company process and getting that work done. This is
10 about the speeding ticket, were you speeding on that
11 specific day. And so you have to look at what does the
12 statute say. You have to look at the language of the
13 specific statute.

14 That's what this case is about, folks.
15 It's about that speeding ticket. It's not about the
16 cleanup of this site. The -- the -- any penalty
17 payments that are assessed here, it's not going for the
18 site remediation. It has nothing to do with the cleanup
19 of this site.

20 The lawsuit, and this is Judge Baker's
21 words, "The lawsuit that you are here about is separate
22 and independent of the EPA's Superfund process." That's
23 going to be handled -- that's being handled. It's being
24 handled by the EPA.

25 But what we're dealing with here is, was

1 there a violation of a specific statute at a specific
2 point in time.

3 IP purchased Champion. It was a separate,
4 ongoing concern. It purchased Champion in 2000. There
5 is no requirement that you do due diligence. There is
6 no requirement -- if you want to buy something and you
7 don't want to look under the cover, you don't have to.
8 You can buy -- you can go out and buy a house and never
9 do any due diligence. You can buy a car and don't do
10 any due diligence. There is no requirement that a
11 company do any due diligence here.

12 They decided to buy this company. They
13 did, and for the reasons I described in voir dire. And
14 you may remember, there was another company, a foreign
15 company, that was coming in, trying to buy and they did
16 have to move quickly to keep the business here in the
17 U.S.

18 The other point here is the County approved
19 the disposal operation and helped design the site in the
20 1960's. We've talked about that briefly; we're going to
21 talk about it a little bit more.

22 The County did not complain about the
23 disposal operation until 2011, 50 years after
24 International Paper had been working with MIMC and the
25 EPA. And so the County now wants to punish us, a

1 company that is working as part of the solution to
2 the -- with the Superfund process and get -- and you
3 heard it -- billions of dollars for the lawyers and for
4 the County and the State general funds.

5 Champion followed the rules back in the
6 1960's when it disposed of the waste. It followed those
7 waste disposal rules. It found reputable companies, Ole
8 Peterson and then MIMC, to dispose of the waste from the
9 paper mill. And we have seen other evidence; and, in
10 fact, the letters that were shown to you were written to
11 Burma Engineering, who is associated with Ole Peterson.
12 That was the same company -- or not the same company,
13 but related companies, and Mr. Burns -- we will pull out
14 that letter in just a second. That letter was written
15 to Mr. Burns, the contractor, talking about the waste
16 disposal process that is no longer about this case.

17 Our contractor worked with the County's
18 chief environmental officer to get approval for the
19 waste disposal site, which this County, itself -- which
20 the County, itself, described as "ideal." And we'll
21 look at those documents, as well.

22 We obtained the County's design input and
23 approval of the site. The contractor built the site at
24 the ideal location and according to the County's design
25 specification. And then Champion turned over the

1 operation by contract.

2 We did the right thing. We got an expert
3 contractor to go in, remove the material from our
4 facility, transport it to the disposal site that the
5 County had approved, and then the contractor put the
6 material into the site that had been prepared by the
7 contractor.

8 That's it. That's it. That's what
9 Champion did; they hired somebody that was expert,
10 reputable, to do this specific operation; and then it
11 lasted from September of '65 until May of '66.

12 We've seen a couple of photos showing the
13 site. This is the 1964 photo showing the site, showing
14 just a few months before the County was involved, went
15 out to the site and inspected it. On the timeline, you
16 see they went out in March of '65. That photo shows the
17 site existing at that time.

18 And here is the photo after it. And you
19 can see the area of the filling, right here
20 (indicating). This is the site, itself, where it was
21 constructed. That was the existence of the site back at
22 that point in time, under the rules existing and
23 approved by the County.

24 So we followed all the government's rules.
25 In fact, there was no requirement that we get the

1 County's approval back then. It was a "wild west" in
2 connection with disposal operations back in 1965.

3 Companies could do what they wanted to do,
4 without getting any permits, without getting any
5 regulations for disposal of waste; but we went a step
6 beyond and required our contractor to make certain that
7 Dr. Quebedeaux, the County's chief environmental
8 officer, approved the site.

9 Let's go back to the '60s for a second,
10 folks. And y'all remember -- my name is Winn Carter.
11 And I went back and looked for a picture of me from
12 1965, about the fourth grade. I was born in '54, 1954.
13 Things have changed, unfortunately, in some respects,
14 but things have changed significantly since 1965. The
15 rules have changed. The knowledge base has changed.
16 Activities have changed. Regulations have changed.
17 There has been change consistently over the last
18 50 years.

19 But what the Government wants to do is to
20 try to put that -- the new time frame, the new
21 regulations, and impose them back to the time of 1964
22 and '65 and '66.

23 Here is another example: You know, cars
24 didn't have seat belts back then. This is how
25 technology has changed over time. I mean, my dad -- I

1 remember my dad reaching across -- when we were making a
2 turn or he was coming to a sudden stop, the seat belt
3 was his arm coming across me and pushing me back against
4 the seat.

5 That's the type of regulation that has
6 changed over this period of time. Today, if you put
7 somebody in that car seat, based upon what we have
8 today, it would be a big problem.

9 This is the standard for today. We have to
10 look at this case for the standards according to the
11 laws in place in 1965, 1966, 1973, when the Spill Act
12 went into effect; in 1985, when the Solid Waste Disposal
13 Act went into effect in 1975. We have to look at these
14 issues with the -- with the specific statutes in mind.

15 So if we hired responsibly a waste
16 contractor, we got government approval, we're now
17 working with the federal government over the last few
18 years at the site, it's important for you to know that
19 our relationship here needs to be focused on the time
20 period that we've allowed.

21 Now, we're going to get into the statutes.
22 Here are the claimed penalty periods, starting
23 February 15th of 1973, December 31st of 1975 for the
24 Solid Waste Disposal Act, and then the Spill Act, the
25 claimed penalty period for the Spill Act beginning in

1 1985.

2 Now, 1985, as I mentioned earlier, that's
3 over almost 20 years after the material was placed into
4 the site. So let's look at those statutes real briefly.
5 This is the Solid Waste Disposal Act -- excuse me -- the
6 Spill Act.

7 Why is ownership important? You said that
8 there was going to be some issues about ownership. Any
9 owner of any onshore facility, any operator or person in
10 charge of any onshore facility.

11 There is no dispute here, folks. We were
12 not operating this facility. We never -- we contracted
13 to have someone to put property -- to put waste onto
14 property owned by another person. That's what we did.
15 The waste went onto someone else's property. It was
16 disposed of by the contractor, and that was it.

17 Ownership is important, and that's the
18 reason these statutes -- let me give you another
19 example. I have a friend, Joe, and he drives a Corvette
20 that's similar to Mr. Villareal's. Unfortunately,
21 Joe has a lead foot. I'm sure that's different from
22 Mr. Villareal.

23 But he picked me up for lunch one afternoon
24 to go to lunch. We get on the Katy Freeway. We're late
25 for lunch. He gooses it. The Harris County Sheriff's

1 department officer pulls up, stops us for speeding, 70
2 in a 60-mile-an-hour zone.

3 I'm riding as the passenger. He writes the
4 ticket to Joe, but then he turns around and writes me a
5 ticket, as the passenger. Now, the statute for speeding
6 is any operator of a motor vehicle driving in excess of
7 the speed limit can be fined. Any operator of a moving
8 vehicle driving in excess of the speed limit can be
9 fined.

10 He gives me the ticket as the passenger.
11 I'm not the operator. But when I turned -- he walks
12 away before I get out of the car to complain, so I have
13 to come to court and defend myself for that.

14 When I come to court, I have a jury. I say
15 I wasn't the operator, I wasn't operating the motor
16 vehicle. Case dismissed; I win. I was not violating
17 that specific statute at the time that I was written the
18 ticket.

19 That's the point that we're trying to get
20 across with these specific acts, because it says "Any
21 owner, operator or person in charge of any onshore
22 facility" in 1985, 20 years -- and remember that the
23 statute goes into effect 20 years -- the statute for the
24 Spill Act goes into effect in 1985, 20 years after we,
25 through our contractor, dispose of waste on the property

1 not owned by us.

2 There is no dispute in this case, ladies
3 and gentlemen, that we were the operator of this onshore
4 facility or that we were the person in charge of the
5 facility at this point in time in 1985. The disposal
6 operation had -- by MIMC, had stopped in 1966.

7 So we're going to have to look at the
8 specific language of the statute to make certain that
9 what is being said is precisely what we're looking at.

10 Let's look at the -- briefly, let's look at
11 the Solid Waste Disposal Act, and remember that the
12 Solid Waste Disposal Act goes into effect in 1975,
13 10 years after the disposal operation. And remember, we
14 didn't own the property.

15 And it has -- in addition to the
16 requirements of this title, no person may "cause,
17 suffer, allow or permit the disposal of industrial solid
18 waste" in 1975, beginning in 1975, okay.

19 I heard something interesting during the
20 County's presentation about cause, suffer, allow or
21 permit, and that was the power to stop. That was the
22 language they used, "the power to stop."

23 Now, I don't know how Judge Baker -- what
24 instruction she's going to give us concerning cause,
25 suffer, allow or permit, or what power someone that

1 didn't own the property, didn't construct the site,
2 didn't have an obligation to maintain the site -- in
3 fact, the County -- you'll hear from the County
4 witnesses, I believe it's Dr. Bedient, that they never
5 said we had the responsibility to maintain this site
6 after -- after the contract terminated. And there is a
7 dispute as to when the contract ends.

8 You're going to see that our contract ended
9 July 1. We believe the evidence is going to show you
10 that the contract ended July 1, 1966, over -- almost
11 10 years before the Solid Waste Disposal Act even went
12 into effect.

13 So what I'm saying is, no person may
14 "cause, suffer, allow or permit" is going to have some
15 special meaning. The County says that we had the power
16 to stop. We didn't own the land. So what special
17 relationship did we have to be able to go onto somebody
18 else's land and stop something from occurring? What
19 special relationship existed? That's going to be one of
20 the issues.

21 Did we own the waste at that time?
22 Interesting, folks, when it goes into the land -- this
23 is hard material. In fact, as it's described back in
24 the documents -- and you'll see those -- as it's
25 described in the documents, trees will grow on it, grass

1 will grow on it. It becomes part of the land.

2 There was never any issue -- you are not
3 going to see any documents that we maintained some
4 interest in this waste, that we had some property
5 interest in the waste, or that there was some agreement
6 with the record title owner that we had any interest in
7 the waste after it was disposed of. It became part of
8 the land. As a result, it became part of the property.

9 There is no special interest here, no
10 special relationship that we had under these particular
11 statutes that we violated any specific language of these
12 statutes.

13 In addition, the Texas Water Quality Act --
14 and this is the one that he showed you no person may
15 "cause, suffer, allow or permit" the discharge of any
16 waste or the performance of any activity in violation.
17 No person may "cause, suffer" -- again, there is going
18 to be a requirement, at least in the County's mind.
19 We'll have to hear from Judge Baker, but at least in the
20 County's mind that we have the power to stop, to go onto
21 someone else's property and stop some activity from
22 happening. There is no evidence of that.

23 So here is some testimony from Dr. Bedient.
24 Dr. Bedient is testifying, and you heard his name
25 mentioned as one of the experts in the case. But at

1 this point in time, he's testifying as the Harris County
2 representative, as a representative of the County, in
3 his capacity as a representative of the County.

4 And he says, taking the County's position,
5 "Champion didn't own the site, did they?"

6 ANSWER: I don't believe so.

7 Champion didn't design the impoundments at
8 the site, did they?"

9 Now, this is Harris County talking.

10 "Champion didn't design the impoundments at
11 the site, did they?"

12 I don't believe so.

13 Champion did not construct the impoundments
14 at the site, did they?"

15 That's -- you're correct.

16 Nor did International Paper, correct?"

17 He states, "You're correct."

18 International Paper didn't own the property
19 on which the impoundments was located, correct?"

20 ANSWER: Correct.

21 They didn't design the levees at the
22 impoundments?"

23 That's correct.

24 They didn't build them?"

25 No."

1 Yet, the County wants for us to have some
2 relationship under these specific statutes, the power to
3 stop, yet the property wasn't owned by us, it wasn't
4 designed by us, it wasn't maintained by us, no
5 requirement. In fact, Dr. Bedient says, "All that
6 Champion did was contract with the company to have
7 material hauled from the paper mill and taken to the
8 site; is that right?

9 Right."

10 That's what we did. We hired a reputable
11 contractor, someone skilled in doing this type of
12 operation. We turned the operation over to them. They
13 then did the operation, and the operation ceased in
14 1966.

15 It's admitted. You didn't own the site,
16 didn't build the site, no control over the site, hired a
17 waste contractor to dispose of the waste, no knowledge
18 that there was a claim discharged at the site by us, the
19 Government approved every single aspect of the
20 operation, and now we're involved in the cleanup of the
21 site. Yet, now, the County wants to come back and sue
22 us for billions of dollars for doing what was right.

23 So as we go through the evidence, listen to
24 the testimony of Dr. Bedient and others that take the
25 stand, about our activities, what we were responsible

1 for. What we did, Champion did, was haul material from
2 the paper mill and take it to the site by our
3 contractor.

4 Let's go back to the timeline just for a
5 second. There is a couple of other interesting things
6 about this timeline. October 1981, the records that
7 you'll see from this case came from various sources.
8 They did not come from the county; the County's records
9 were destroyed in 1981. So the records that you see
10 from Dr. Quebedeaux, these came from files, not from the
11 County's files, on the approval of the site. We don't
12 have the records from the County as to what occurred, if
13 anything, if they have any records, what occurred after
14 1966.

15 Here is the letter -- and I just showed
16 this to you. The County approves the location. The
17 location of the spoil pond, June 11th, 1965, the
18 location of the proposed spoil pond, which is located on
19 the west bank of the San Jacinto River, just north of
20 the Highway 73 Bridge "seems to be ideal for the purpose
21 for which you intend to use it. This is particularly so
22 since the bottom and sides, or dikes, are composed of
23 clay, which should render it practically impossible for
24 seepage to escape and enter into the San Jacinto River."

25 Here is a telephone conversation with

1 Dr. Quebedeaux in March of 1965, and this is from our --
2 our records, Champion's records: "He approved," Burns,
3 Bobby Burns, a "method of developing a pond and storing
4 these waste materials at the mouth of the San Jacinto
5 River." Dr. Quebedeaux went further to say that he had
6 inspected the Burns equipment and ventured an opinion
7 that this equipment "was the best he had seen," the
8 equipment that he was going to be performing this
9 disposal operation in.

10 He did not, by direct statement, indicate
11 disapproval of any other method of disposal, but did say
12 that the Burns method, the method that was used at this
13 moment, was "the most satisfactory of any that he knew
14 of."

15 How much more do you need from the County?
16 What else would you need from the County, approving the
17 type of operation we did? This is testimony by
18 Dr. Quebedeaux at a hearing. Dr. Quebedeaux: "Well, I
19 was originally involved with the original contractor in
20 helping design the present pits. They were set up so
21 that there would be no discharge of any kind."

22 We studied this for several months, had
23 other bids from contractors, had others that -- we
24 wanted to make sure that this process -- that we did our
25 due diligence on the process. And you'll see those

1 documents; it's a thick document showing what we did on
2 the due diligence; and he approved the entire operation.

3 And here is a picture of Dr. Quebedeaux. I
4 said he died in '78. Actually, he died in '76. This
5 man was not just a government official. He had
6 six degrees. He had done chemical research. He had a
7 B.S. and master's, a Ph.D. in chemistry, had a law
8 degree, industrial engineer, worked in the industry.
9 And from 1953 through 1976 he was the director of the
10 Air and Water Pollution Control section of Harris
11 County, the position that Mr. Allen, who y'all will hear
12 from, holds today. And he's written more than 20
13 papers. This was not a gentleman that was just out
14 there. He was trained. He was knowledgeable in
15 approving the operation.

16 We have seen that the site was above the
17 water in 1966 and surrounded by land. In fact, here is
18 some testimony from Mr. Allen where he is saying for the
19 Pollution Control Board, "And I think -- what did you
20 say, that this is not -- this is not a Pollution Control
21 suit?"

22 And what he's doing is talking about a
23 Pollution Control office, his position. "This is not a
24 Pollution Control suit? So you no longer have control
25 over the case or the penalty being assessed?"

1 | What does he say? "Correct."

2 Is that because Dr. Quebedeaux, his
3 predecessor, had approved this operation?

4 Here is further testimony -- and he's
5 designated as the County representative. And this is
6 testimony -- we've been talking about dioxin, and I want
7 to get into that just for a minute.

8 When this disposal site -- we talked about
9 dioxin a little bit. We talked about it earlier. We
10 talked about it becoming a hazardous waste in 1985.
11 Dioxin was not known to anybody before the 1980s. 1965,
12 1966, no one knew that dioxin was part of the paper mill
13 process. No one knew about that. That didn't happen
14 until the '80s, 20-plus years after this disposal had
15 been done.

16 Also, dioxin is -- is in a lot -- has a lot
17 of different sources. And here is some testimony again
18 from Mr. Allen:

19 "And the incineration of municipal and
20 industrial waste, that certainly occurs.

21 "You have incineration of industrial waste.

22 "And certainly that has been known by
23 Harris County, who have people and cars drive around.

24 "That's correct.

25 "All of these are sources for dioxin and

1 you can get dioxin from that, right?

2 "Yes.

3 "As a combustion by-product?

4 "Yes.

5 "And that goes into the area here and it
6 comes down through the rains, correct?

7 "Correct.

8 "And it can go into the storm water runoffs
9 and bayous of Harris County and then into the river,
10 right?

11 "Yes, it could do that."

12 So -- "And Harris County acknowledges that
13 there are other sources of dioxin in the San Jacinto
14 River other than the San Jacinto site in question,
15 correct?

16 "That is a known fact, yes."

17 Now, that is not to say that this does not
18 need to be cleaned up. That's the Superfund process.
19 What we're talking about is a violation of a statute, a
20 violation of a statute where penalties, if any, should
21 be considered.

22 Once dioxin is created through this --
23 through the process, it seeks to bind itself to the
24 organic material, the pulp material in the paper mill
25 waste, so rather than float on the water, it will seek

1 to become part of something physical, so it will bind
2 itself to the paper mill waste, to the pulp itself. And
3 here that means that the dioxin wants to bind with that
4 wood fiber and not go anywhere else.

5 And Harris County knows and admits that
6 there are lots of sources of dioxin, as we've discussed.
7 And you can also fingerprint dioxin, so you can identify
8 the source from which dioxin comes from. So because the
9 specific dioxin has a specific fingerprint, just like
10 the fingerprints on my hands, you can also find a
11 fingerprint for dioxin and where it comes from. That's
12 because in the '80s, in the '80s now, for the first
13 time, that technology had been developed to detect
14 dioxin in minute amounts like never before and with
15 greater specificity.

16 And it's at that point in time -- and we
17 heard a little bit about the 104 Mill Study and the 5
18 Mill Study, because neither the Government nor the paper
19 industry, nor anyone else, thought there could be dioxin
20 in paper mill waste. The paper mills were not on the
21 list.

22 But by random testing the Government began
23 to think in 1983 that there might be dioxin coming from
24 the paper mills. And this is a brief mention from a --
25 from the 5 Mill Study that says dioxin is not known in

1 waste until 1985, when this 5-mill -- the five paper
2 mills were studied, that this 5 Mill Study revealed
3 that this early screening study of five bleached Kraft
4 mills -- and "Kraft" is a specific process -- "confirmed
5 that the pulp-bleaching process was primarily
6 responsible for the formation of the CDDs and CDFs."

7 So don't get confused. Dioxin wasn't known
8 back in 1965 and '66. Don't be confused by that. Not
9 until 1985 was it even first identified as part of the
10 process.

11 The next study was called the 104 Mill
12 Study and was published in the early '90s. That study
13 confirmed that it was the bleaching process that created
14 dioxin. A big surprise, given that everyone always
15 thought that only incineration or burning caused dioxin.

16 The paper industry changed the type of
17 chlorine it used for bleaching, and the problem was
18 fixed. So it was all about one specific chemical.

19 So the Government knows quite a bit about
20 dioxin and all the sources for it, and it knows that it
21 can take any piece of dioxin and pinpoint it to a
22 particular source. And that same science is how we all
23 know that this waste is not responsible for all of the
24 pollution in the San Jacinto River.

25 And the Government knows that, too -- and

1 the Government knows that.

2 Now, we've talked a little bit about
3 dredging. It wasn't to open the channel; it was for
4 sand mining. This is an area for sand mining, so that
5 it can be used in buildings and roads.

6 And there were a number of sand dredging
7 companies that operated in this area. And what happened
8 was as -- and this operation had been going on for many,
9 many years, since like the '70s. And, in fact, if
10 you look at this letter, this is -- and you heard
11 Mr. Owen as he was identified earlier as one of the
12 lawyers here in the case, the chief environmental lawyer
13 for Harris County, "As a matter of fact from some photos
14 I reviewed recently that were taken back in the '70s it
15 looks like a large portion of one of the cells, one of
16 the portions of the impoundments, one of the portions of
17 the disposal site, "was dredged away."

18 This is a statement by the County lawyer,
19 from Rock Owens, who is sitting here in this courtroom.
20 An admission by these lawyers that dredging was involved
21 and was causing -- as far back as the '70s, "It looks
22 like a large portion of one of the cells were dredged
23 away."

24 What this sand mining also does, ladies and
25 gentlemen, it can affect and change the course of the

1 river; and that has the impact of bringing water closer
2 to the area.

3 There is something else that's involved
4 here, and that's subsidence. From the '60s up until the
5 '80s, this land dropped 10 feet because groundwater was
6 pumped from this area, 10 feet in elevation. So you
7 have a lot of different activities going on, subsidence,
8 dredging that are impacting this particular site.

9 We also have another slide here -- and
10 you'll see all of these. In looking over the more
11 recent data, I believe more firmly -- this is a
12 gentleman by the name of Andrew Sipocz. Mr. Sipocz is
13 with the Texas Parks & Wildlife division. He wrote this
14 back in 2005 and said this to one of his colleagues,
15 Patricia Radloff: "I believe more firmly that the
16 recent sand mining was responsible for the increase in
17 dioxin levels at the site noted between 1994 and 2002."

18 These documents confirm -- and there will
19 be other testimony -- these documents confirm what was
20 going on at this particular site and how the dioxin
21 moved out of the site. And you're going to see
22 photographs and documents that show the migration and
23 how this -- how the dioxin migrated out of the site due
24 to dredging.

25 We believe at the end of the case the Judge

1 is going to give you some instructions concerning these
2 specific statutes and how they apply to International
3 Paper. I can't predict what those instructions may be;
4 but I do believe that they're going to have, "Did
5 International Paper have the right and the power," the
6 right and the power. And that comes from having a
7 relationship not simply to the waste as it was
8 generated, that we were a waste generator in the stream,
9 but did we have the power at the time that these
10 statutes went into effect to stop some type of discharge
11 when we didn't own the land, we didn't have an
12 obligation to maintain it.

13 And the County, I believe, will say that,
14 that we had no responsibility for this particular
15 activity in 1973, 7 years after the last disposal; 1975,
16 10 years, 9 years after the last disposal; and then
17 1985, 20 years after disposal. It's going to be
18 incumbent upon you to review the statutes, the Court's
19 instructions, to deal with this, to deal with the
20 statutes.

21 You're not going to hear from one single
22 government employee who is going to say that they had
23 any contact with Champion Paper or International Paper
24 at any time after the original disposal until 2011, or
25 2008 when the Superfund process came on board, but

1 certainly not until 2011, when we were sued, had one
2 single complaint about what we did in 1966, to cause
3 some release in 1973, to cause some release in 1975, to
4 cause some release under these specific statutes. Not a
5 single document from '73 forward that Harris County
6 says, "Champion, you've got a problem out at this site."
7 There is not going to be one document that says that.
8 Yet, they knew about the site. They understood where
9 the site was. They had knowledge about the site, and
10 didn't do anything about it.

11 In fact, to the contrary, what you're going
12 to see, what you're going to see from the documents is
13 that we did the right thing, we hired a responsible
14 contractor. We made sure that the County was not -- was
15 involved and approved what we were going to do. And the
16 only documents that you're going to see will show a
17 professional, lawful operation that MIMC carried out and
18 managed this material.

19 Because of the delay in bringing this suit,
20 we can't bring any live witnesses to you, as I mentioned
21 earlier. And it's unfortunate, because I think if we
22 had live witnesses here, if we had the Champion people
23 that were involved back in 1966, if we could ask
24 Dr. Quebedeaux some questions, we would be able to -- we
25 might get some interesting answers about that. But

1 we're not going to be able to hear from them. All you
2 are going to have is the documents.

3 The evidence will show we have not violated
4 any of the statutes under which we've been accused, we
5 did not own or operate the facility in '85, we did not
6 have any ownership or control of the land in or after
7 1973, and even before. We never had any ownership or
8 control of the land, but certainly in 1973 when they
9 claim that we had a penalty when the first discharge
10 occurred. And we contracted to have our waste hauled
11 away in a way approved by the County. You don't expect
12 the County to come knocking at your door some 50 years
13 later saying, "Hey, what you did back 50 years ago is
14 wrong."

15 Thank you for your attention. We look
16 forward to presenting our case to you.

17 THE COURT: Thank you, Mr. Carter.

18 All right, ladies and gentlemen, we're
19 going to go ahead and take our lunch break, and we will
20 start back up at 10 after 2:00.

21 (After a break, the jury was present and
22 the following proceedings were had:)

23 THE COURT: Please be seated.

24 You may proceed, Ms. Hinton.

25

*

OPENING STATEMENT

BY MS. HINTON:

Good afternoon, everyone.

THE JURY: Good afternoon.

MS. HINTON: I'm glad you've had your lunch. We're back. I get my chance again to talk with all of y'all and give what is called my opening statement, where I'll give you a little summary of the evidence that MIMC believes will come out in this case.

I wanted to introduce you again to my law partner, Melanie Gray, who is going to try this case with me. And you'll hear us refer to MIMC again throughout this case. I shortened it from McGinnis Industrial Maintenance Corporation to MIMC.

But I also have someone else here today for y'all to meet, and his name is Mr. Kinnan Goleman.

Mr. Goleman, would you stand up, please?

(Complies)

Mr. Goleman is going to be the corporate representative here. He's going to testify here for MIMC.

But I've got to tell you that, you know, and I told you the other day, that MIMC ceased operations as a waste disposal company in 1994. So what we had to do, because the -- Harris County deposed and

1 talked to folks before this trial began, we had to do
2 something called designating a corporate representative.
3 And that's a little difficult 50 years after the fact,
4 when you don't have any employees and you're not in
5 operations.

6 So what we had to do -- and we're required
7 to have somebody who can talk about the company and the
8 events of the past. We -- Mr. Goleman is from Austin.
9 He's a lawyer/lobbyist engaged in governmental
10 regulations and affairs. We had to hire him to be our
11 corporate representative.

12 And Mr. Goleman had the unfortunate task to
13 have to go through all the documents that we could
14 locate about MIMC, talk to some folks and try to piece
15 together, as best we could, the MIMC story and the past
16 history. The good thing, though, about Mr. Goleman is
17 that he was around during the '60s and he was around
18 during the '60s in this business.

19 You're going to hear how he, while he was
20 in law school, worked at the Texas Water Pollution
21 Control Board from July of 1964 to August of 1967. So
22 we found somebody who was around at the time of the
23 infancy of regulations and all beginning to happen on a
24 State and local basis. So he'll help us. He certainly
25 has helped me, and he's going to help you with the

1 history of MIMC and the historical perspective on the
2 Texas environmental regulations.

3 I told you that MIMC is the only former
4 operator of the site, which we're going to talk about in
5 this trial. That was north of the I-10 highway. It was
6 Highway 73 then. And you are going to see lots of
7 pictures about it, as we go through this trial.

8 And, once again, you've heard several
9 times -- and I'm going to repeat some of the stuff the
10 gentleman before me have talked about -- that this site
11 was in operation for only 9 months and then it was
12 filled. Like any sort of waste disposal facility, when
13 it's filled up, it gets closed and you move on.

14 So back then, in 1965 and 1966, there were
15 no permits required. There was no permit required with
16 respect to building this facility, designing this
17 facility, or putting the material in the facility. And
18 I'm going to talk to you a little bit more about that as
19 we go through a PowerPoint that I put together for you.

20 So I -- in getting ready for this case, I
21 also tried to put myself back in that period of 1965 and
22 look at some of the history and the Houston area and
23 where we all were; and it was a different time and place
24 then. It was -- the last of the baby boomers had been
25 born. That was 1946 to 1964. And I'm a baby boomer.

1 So I thought, well, what in the world -- what did things
2 look like at that point in time, not only in Houston,
3 but for me. So I want to take you back a little bit to
4 1965.

5 I told y'all I was from Gaston, Alabama,
6 and I'm not that cute little blond one in the center.
7 My brother calls that his Woody Allen face. I'm the
8 10-year-old girl on the right with the big coat on and
9 the cat-eye glasses, which some of us may have had.
10 That was also a time we had our dogs running loose; no
11 leash laws back then. But that's me in Gaston, Alabama.
12 I don't know if my picture is any cuter than
13 Mr. Carter's, but it sure did bring back a lot of
14 memories for me, looking at the back porch of my
15 parents' house.

16 Now, what was Houston like at that time?
17 What was happening in the nation? Think back that this
18 was the time that we had the second manned space
19 program, the Project Gemini. That sure seems like a
20 long time ago to me now. I couldn't believe it was the
21 same year that the first full year of production for the
22 Ford Mustang. We all remember those and folks who might
23 have been lucky enough to drive one. Sonny and Cher had
24 their first televised performance, and you had the
25 Beatles at the top of the music charts.

1 So what was happening in Houston at that
2 period of time? I wasn't anywhere near here. So I
3 asked for some folks to go back and find me some
4 pictures of what did Houston, Texas look like in 1965.
5 Believe it or not, in the middle there you'll see what
6 was the Humble Building, the Exxon Building. It had
7 just been finished. It was 44 stories high; and believe
8 it or not, it was the tallest skyscraper west of the
9 Mississippi River in 1965.

10 It's amazing to look at this picture
11 because you can also see what is happening in Houston in
12 1965 is, look at all the buildings that are coming up,
13 but not the tall ones like we see today, but you can see
14 buildings, things happening in Houston. We're starting
15 to spread out.

16 Now, I also couldn't believe when I went
17 back and checked that this was also the same time period
18 that the Astrodome opened in 1965; and my young lawyers
19 had never heard the phrase "The Eighth Wonder of the
20 World." But I certainly remember when the Astrodome
21 opened, and I was over in Alabama, but it was -- it was
22 called "The Eighth Wonder of the World."

23 And I thought about what happened in the
24 Astrodome in 1965. Believe it or not, it was -- the
25 first baseball game held at the Astrodome, Houston beat

1 the Yankees 2 to 1. And Mickey Mantle hit his first
2 indoor home run. That's how long ago this was, and
3 that's what was happening in Houston, Texas. It was an
4 exciting time. It was a busy time in that time period.

5 Now, this was appearing (indicating) -- and
6 I would never have imagined. One of the first
7 performances in the Astrodome was Judy Garland and the
8 Supremes on December 17th, 1965, a pairing for a musical
9 concert I wouldn't have thought of. But let's talk
10 about what was happening in Houston and around Houston
11 that was causing this influx of activity, of business,
12 of prosperity.

13 Champion Paper was flourishing over on the
14 San Jacinto River, a paper mill. There were many other
15 industries out there in that area. And at that point in
16 time, as y'all have heard about -- and you are going to
17 hear these names again from me and you are going to hear
18 them many times from the stand and as this case goes
19 on -- they were looking for a contractor to dispose of
20 the paper mill sludge.

21 So they are looking around and they're
22 considering a number of people, but they also are
23 interviewing a company called Ole Peterson. And that's
24 not a man. When I first heard the name, I figured that
25 was a name for a man. That was actually the name of a

1 corporation.

2 Ole Peterson. To sort of explain how this
3 all fits together with the names on the documents you're
4 going to see, you've got a Mr. Bobby Burns, who had a
5 company, Ole Peterson, that was seeking to get the waste
6 disposal contract for the paper mill sludge from
7 Champion. And you also had a company named Burma
8 Engineering. Burma Engineering wasn't a Brown & Root,
9 wasn't of that size, but it was an engineering company
10 and construction company in the area.

11 So Mr. Burns, with his company Ole Peterson
12 and his company Burma, they wanted to start preparing
13 for a waste disposal operation. Now, it's critical for
14 y'all to know at the time, again, that at the time this
15 facility was built, there was no permitting required for
16 the construction, the design, or the maintenance, how it
17 all ended up. There was none required. That was
18 because environmental regulations were in their infancy.
19 So there was no permitting system in existence.

20 Despite the fact that permits weren't even
21 in existence, Bobby Burns and Ole Peterson and Burma
22 Engineering, with Champion, wanted to make sure that
23 this facility got the right approvals. Whether they
24 were required by law, by permit, whatever, they wanted
25 to take the extra effort. Knowing that there was a

1 gentleman in Houston at that time, Mr. Quebedeaux -- I
2 may say it wrong, but I say Quebedeaux -- and he was the
3 man in charge, so they contacted Dr. Quebedeaux, the
4 County's chief environmental officer, to get involved in
5 this process.

6 At this time his title was Director of the
7 Water Pollution Control Section of Harris County Health
8 Unit. At that point in time, it's interesting to note
9 on the state and local levels the environmental agencies
10 that were starting to be in existence were usually under
11 the health departments. So, as I mentioned, permits to
12 design, build, or operate a facility weren't required,
13 but they sought the involvement and the commitment of
14 Dr. Quebedeaux anyway.

15 Now, you're going to see these letters so
16 many times y'all are going to have them memorized better
17 than I do in this case; but you see first this
18 March 1965 letter where Dr. Quebedeaux was involved and
19 he had met with them about approving the methods of
20 developing the facility for storing the paper mill
21 sludge. So Dr. Quebedeaux points out in his letter that
22 he indicated that the method that was being proposed was
23 the most satisfactory of any that he knew of at the
24 time.

25 Don't let anybody tell you that this was a

1 fly-by-night operation where they were slipping waste
2 out the back door and dumping it down a drain or onto
3 somebody else's property. That was a facility that even
4 Dr. Quebedeaux indicated was the most satisfactory of
5 any he knew of at the time.

6 Now, after satisfying Champion Paper, Ole
7 Peterson entered into a contract for the removal of that
8 sludge. Now, that contract was done April 29th, 1965.
9 Now, I'm taking you back to '65 again because it's also
10 important to think about the nature of the material, the
11 paper mill sludge, what was left after the processing
12 that they stored out at their facility. But they had
13 run out of room, and they had to figure out a way for
14 proper disposal of it.

15 At this time you'll see in the contract
16 that Champion and Ole Peterson signed that it said the
17 sludge to be removed by contractor is not considered by
18 the parties to be inherently harmful or dangerous.
19 That's what folks knew and thought in 1965. That was
20 the basis for this contract.

21 Now, pursuant to the contract, Ole Peterson
22 was supposed to find a piece of land that was suitable
23 and acceptable to Champion. And you are going to see
24 these photos again and again over the next few weeks,
25 but I want to put you again on this site. And this is

1 that 20-acre tract of land located to the north of
2 Highway 73 and west of the San Jacinto River.

3 And if you-all have got things in front of
4 you, you can probably see the bend of the river better
5 than I can. But you can see this site was in the land,
6 not on the river, but at this point in time inside, off
7 the river, toward the land.

8 Now, it was a 20-acre tract and it was in
9 what was already a pretty heavily industrialized area.
10 We all know that along the San Jacinto River there are
11 other industries, other businesses; and they were
12 building up at that point in time and there was a lot of
13 business going up and around there.

14 And the facility was approved by the
15 director. Dr. Quebedeaux specifically approved this
16 site. The evidence will show that this site, this
17 20 acres, Dr. Quebedeaux said it was ideal, it was an
18 ideal site for the purpose for which it's intended.

19 It's going to be important to note, too,
20 that none of us can take ourselves back to 1965, except
21 in our minds when we look at photographs of ourselves
22 from back then. But it's important to know, too, what
23 Dr. Quebedeaux said about the material at that site. We
24 have to remember, Dr. Quebedeaux saw it. He's not here
25 today to testify from the stand, but he saw it.

1 And what did he say about that material?
2 They want you to think it's all sand, it fell apart, it
3 was constantly deteriorating, there was no way it could
4 have been secure. That is not what Dr. Quebedeaux said.
5 Dr. Quebedeaux said that the sides, the bottoms, the
6 dikes, they're composed of clay, which should render it
7 practically impossible for seepage to escape and enter
8 into the San Jacinto River.

9 This was a man who did his job. He checked
10 the material. He checked the impoundments. He checked
11 the design. He checked the construction. Even though
12 no permit was required, the parties in this case wanted
13 that oversight with respect to this facility.

14 Now, he visited the site on several
15 occasions before it was built; and besides saying it was
16 ideal, he went back again and sent another letter to
17 make sure that it was clear that the site he was looking
18 at was this one. And let me show you where that is.

19 If you look at what I pulled out in this
20 letter, you'll see it's located on the west bank of the
21 San Jacinto River just north of the Highway 73 bridge;
22 and, once again, this letter again talks about the clay,
23 the sides, the dikes, the ideal nature of this facility.

24 Now, after receiving the blessing -- didn't
25 have a permit, but after receiving the equivalent of a

1 blessing from Dr. Quebedeaux, Ole Peterson, with the
2 assistance of Burma Engineering, continued to build this
3 facility at this site. I want to talk a little bit
4 about the facility, and I have tried -- I'm not an
5 engineer. So I've tried to have pictures drawn so I can
6 best explain it to you.

7 The facility is surrounded by a clay levee,
8 as Dr. Quebedeaux said. The impoundments are lined with
9 clay and are separated by clay berms, according to what
10 Dr. Quebedeaux said at the time. And on this western
11 side, this left side -- and I've got another graphic
12 demonstration to show you -- is where the material would
13 be put and then it would settle down to the bottom. It
14 would dry and the water would rise up.

15 But before that started happening, we had a
16 little bump in the road. The bump in the road was Ole
17 Peterson fell on hard times. Mr. Burns got extended.
18 He ended up in bankruptcy, and he filed for bankruptcy.
19 The plaintiff mentioned the fact that he had an IRS lien
20 put against him with respect to what Champion owed him;
21 and by August 19th, 1965, Ole Peterson was no longer in
22 operation.

23 At this time there was a 58-year-old man
24 who was a native Texan, and he was an entrepreneur in
25 the area. He was born, you'll hear, in 1907 in Possum

1 Trot, Texas, which I looked up and it is somewhere up in
2 East Texas and it still exists. It's not a very big
3 place, but it's still there.

4 He was married to a Ruby McGinnis; and they
5 had had two children, Lawrence and Billie Doris. They
6 were adult children at this point in time in the 1960s.
7 So Virgil and other McGinnis family members had had for
8 a good while, since the '30s, a construction business;
9 and by the mid '40s they had incorporated it into
10 McGinnis Brothers Construction. So he was a man who was
11 already out in business in this area and was engaged,
12 and he knew Burma Engineering and Bobby Burns and Ole
13 Peterson.

14 Now, McGinnis Brothers Construction had
15 done a large number of projects, big and small, in this
16 area around Houston. They had even been involved in the
17 construction of the canal system from the Brazos River,
18 from Alvin to Texas City. This was not a fly-by-night
19 operation. This was a long-established businessman in
20 the area, who fed his family, had his brothers, had his
21 children -- they were all involved in this business.

22 Now, Virgil knew the Ole Peterson company
23 and he had tried to help Bobby Burns a little bit with
24 his accounts; but then he was in a position to take over
25 or attempt to take over that waste disposal contract

1 that Ole Peterson had with Champion. So to that end,
2 what Virgil McGinnis did was he bought that 20-acre
3 tract of land that we've been talking about.

4 He stepped up and he bought that land
5 August 3rd, 1965; and he is the record title holder, as
6 Virgil C. McGinnis, Trustee. So on August 3rd, 1965,
7 Virgil McGinnis becomes the owner of the site that's at
8 issue in this lawsuit.

9 Now, later on August 31, 1965, at the time
10 Virgil McGinnis bought the property, MIMC didn't exist.
11 It did not exist. MIMC was incorporated under the laws
12 of the State of Texas on August 31, 1965 and MIMC's
13 business was to be in the waste disposal business. Now,
14 at this point in time, too, the Champion contract had
15 not yet been transferred to MIMC, or to Virgil McGinnis
16 for that matter.

17 Now, I want to tell you a little bit about
18 who held the stock in McGinnis. The evidence is going
19 to show that when they set up the company, the bylaws
20 and the articles of incorporation say, well, you could
21 transfer stock, transfer property, or pay cash for the
22 stock. And the minutes reflect that Virgil paid for the
23 stock and then he distributed the stock out to himself
24 at 20 percent, his son at 30 percent, who was going to
25 be the president, his daughter, Billie Doris McGinnis

1 Gladfelter, and then he gave 40 percent of the stock at
2 that point in time in 1965 to his employees. Whether it
3 was his controller, accountant, or administrative
4 assistant, he spread the rest of the stock to the
5 employees. This was a new operation that the McGinnises
6 were going to get into.

7 But, finally, on September 10th -- and
8 that's an important date. That is the date that the
9 contract that Ole Peterson had had with Champion was
10 assigned to McGinnis Industrial Maintenance Corporation.
11 Champion gave its consent, and now we have MIMC holding
12 that contract for waste disposal of the paper mill
13 sludge with Champion.

14 Now, you're going to see documents and hear
15 testimony that at that point in time, within a week,
16 they started moving, as MIMC, the paper mill sludge to
17 this facility. And it's important for you to know, and
18 you'll hear this, too, until -- between September 13th
19 and September 16th of 1965, no waste material had been
20 put in this site. This was a brand-new site, a
21 brand-new site where they started bringing new material;
22 and this was a site where the only material that went
23 into this facility was this Champion paper mill sludge.
24 Virgil McGinnis and MIMC did not haul material for other
25 people into this site.

1 So I thought it was important -- you've
2 seen the bigger pictures, and we'll look at some more.
3 But as I described, you've got on the left side where
4 the paper mill sludge would come in and then it was a
5 higher area and as it settled down to the bottom, the
6 water would rise up and run off to the pond on the
7 right.

8 Now, we heard a little bit of talk, but not
9 enough talk, in my opinion, about the nature of this
10 material. Champion had this sludge in holding ponds up
11 at Champion Paper. And you'll see documents that this
12 material was so hard that you had to cut it with a water
13 jet. Then you had to put water in it to pump it out of
14 the Champion facility onto the barges because this
15 material wasn't hauled by trucks to this facility. This
16 material was hauled by barges down the San Jacinto
17 River.

18 So they had to cut this material out up at
19 Champion, put water in it to make it what has been
20 called the nature of cardboard or like an egg carton, in
21 order for it to be of a texture that it could be put on
22 the barge and moved down. Then that material was put
23 originally on the west side of this facility; and as the
24 material dried, that water would rise up -- and they had
25 some pipes through the center and it would run off to

1 the right side of the facility.

2 But this material didn't remain as
3 cardboard, wet cardboard, or egg cartons. As it dried
4 out, it got hard. As you heard, it would solidify and
5 ultimately grass would grow on it, trees would grow on
6 it. There is evidence and documents in the record that
7 they would talk about Mr. McGinnis saying he could
8 put -- it could be used as matting and he could put his
9 equipment on it. So I don't want you left with the
10 impression -- the evidence is going to show that this
11 material would solidify.

12 Now, once the eastern impoundment -- the
13 western impoundment and the water would run off, I want
14 to show y'all what happened. So as I said, the barge
15 would come up the San Jacinto River, or down. They
16 would then pump the barge -- from the barge into the
17 impoundment the material. The water would run off to
18 the right side and it would go off into the runoff pond.
19 And then what happened to the water?

20 That water would then be pumped back onto
21 the barge and taken back up to Champion to be put in
22 their water treatment facility operations. So they had
23 a very sophisticated operation here, where the material
24 went in, the water drains off, the water goes back up to
25 Champion to be treated.

1 So I'm not going to go through this in
2 great detail here again because we've all touched upon
3 these in the discussions; but I do want to remind
4 you-all that the operations started in September of
5 1965, the disposal commenced. It ended May 10th, 1966,
6 and the evidence is going to show the contract relating
7 to this site between Champion and MIMC terminated on
8 July 1, 1966.

9 Now, the facility was closed for all
10 purposes at that time, just like any material dump.
11 You've all seen: They fill it up, it gets pushed
12 over -- material gets over it, it grows over, it's done.
13 That's what happened here. The material was filled into
14 the impoundment. It was closed, and it moved forward.

15 It is not, as they would like to
16 characterize it, that somebody dumped the material in
17 and we abandoned it in the dark of the night. That is
18 not what happened. This was a very sophisticated
19 operation for the time, approved by Harris County and
20 Dr. Quebedeaux, and even reviewed and approved by the
21 State at the time of its closing.

22 Now, one interesting thing, too, is they
23 attempt to say that we went away, we didn't do a thing,
24 we left, we abandoned it. Well, let me tell you what
25 Harris County's own expert, Mr. Davis Ford, says. He

1 says that MIMC had no ongoing maintenance obligation for
2 this facility at the time operations ceased, that once
3 the facility was filled, there was no obligation back
4 then to continue maintaining the site, it was a closed
5 site; and their own expert, Mr. Davis Ford, admits that,
6 as will other experts on the stand here.

7 Now, I've already talked to you about the
8 fact Virgil McGinnis owned the property; but I want to
9 talk to you, too, about a couple of items they brought
10 up in Harris County's opening. One was they looked at
11 the 1968 minutes of MIMC.

12 And MIMC was on a fiscal year system, which
13 all of you are familiar with, where fiscal year '67
14 would start February 1, 1966, and run until August of
15 1967. So it's not a calendar year. It was a fiscal
16 year basis.

17 So we showed you the MIMC minutes from
18 1968, and the end of their fiscal year was in August.
19 That's what the evidence and the documents will show.
20 And in those documents it does show that the board voted
21 to abandon the site for tax purposes. They wrote off
22 the operations of the facility for tax purposes.

23 It wasn't a "Are we joyous, we're leaving
24 this site." They were merely doing what their
25 accountants recommended and they were writing off that

1 facility because it was full. Nothing sinister about
2 that by the use of the word "abandon." It was used for
3 tax purposes and recommended by their accountants.

4 Now, they also seem to imply that there was
5 something sinister about a family-run company awarding
6 bonuses at the end of their fiscal year. We didn't see
7 anything sinister on the screen this morning about the
8 fact that at the end of a fiscal year that Lawrence
9 McGinnis, the son who was the president, I think he got
10 an 8- or a 9,000 bonus at year-end and Virgil McGinnis
11 and others got like \$2,000 each.

12 Most people who are employed at the end of
13 the fiscal year or at the end of the calendar year get
14 bonuses. That's all those minutes reflect. Those
15 bonuses are not shown to be tied in any way to the
16 closure of the site that's at issue in this lawsuit.

17 And as you-all know, MIMC continued
18 operating until 1994. 1968 wasn't the end of MIMC.
19 1966 was the end of the operation at this site, but MIMC
20 continued in the waste disposal business until 1994. So
21 I did not want y'all left with the impression, since I
22 wasn't putting it up there, that there was something
23 sinister about the 1968 minutes.

24 In addition, they're going to tell you that
25 and attempted to tell you that in 1992, when the shares

1 of MIMC were purchased by the GCE, that MIMC made
2 millions. MIMC didn't make millions. MIMC's stock was
3 purchased. The stockholders in MIMC were paid for the
4 stock of MIMC, and MIMC went to be under another
5 corporation.

6 The fact of the matter is, you'll see in
7 the records that at that point in time the two children
8 of Virgil were the shareholders of MIMC; and they were
9 paid for their shares in MIMC in order for the other
10 company to purchase the shares, so that company would be
11 under the umbrella of GCE. So nothing sinister there,
12 either. The two individuals sold their stock; but MIMC
13 was still operating, and still operating until 1994.

14 Now, I also asked myself, so why are we
15 here about a site from 50 years ago? Why are we here?
16 One of the reasons we're here is because after this site
17 was closed, later in years environmental laws were
18 passed in Texas. Those laws were not in effect at the
19 time that this site operated.

20 What we're here about, too, is it's like
21 the old waste pit lottery: Can we find billions of
22 dollars in civil penalties for the State of Texas and
23 Harris County? Billions of dollars they are seeking in
24 daily penalties from 1973 to 2008.

25 And in listening to Harris County's

1 description of what they're seeking, they almost talked
2 to you a little bit, but not completely, about the
3 attorney's fees issue in this case. And I'm an
4 attorney, and I'm proud to be an attorney. I know many
5 folks don't like attorneys.

6 But I have to set this record straight, and
7 the evidence is going to show this. Mr. Wotring told
8 you that they're going to be seeking their attorney's
9 fees for the actual time that they have spent in the
10 amount of approximately \$10 million. And then he sort
11 of said, "Well, and then there is more, but there is a
12 cap."

13 Well, let me tell you what the "cap" is and
14 what the "more" is. The way this case is set up is if
15 there is a recovery of civil penalties, 50 percent of
16 that recovery would go to the State, 50 percent of that
17 recovery would go to the County. The attorneys for the
18 County, who are outside counsel -- they're not
19 government attorneys. They're an outside law firm just
20 like I am with an outside law firm -- those attorneys
21 have an agreement with the County where they are asking
22 for 25 percent of any recovery the County gets, unless
23 there is a governmental cap applied to it, which they
24 don't think applies to them.

25 So at lunch I thought, well, I need to set

1 this straight about what the evidence is going to show
2 and what Ms. Baker is going to testify to, because we're
3 going to have this come out. So we've got a case where
4 they're seeking 3.7 billion total in damages. If they
5 get that, 1.85 billion of that would go to Harris
6 County, less 25 percent to the attorneys.

7 And I wanted to run the numbers to see what
8 is that 25 percent. That 25 percent is a potential
9 attorney recovery of 480 million, which includes the 10
10 million they get on top of that for their actual time
11 they allege they've spent. So, believe me, the
12 attorneys have a lot invested here, 480 million
13 potential recovery for the lawyers. So I wanted to set
14 the record straight to say the evidence is going to show
15 that, when Ms. Baker takes the stand about what their
16 arrangement is with the County, and why I call this the
17 old waste pit lottery.

18 Now, in the years following MIMC's waste
19 disposal activities on the San Jacinto River, you've
20 seen some of the pictures and heard about some of the
21 things that happened to the land around there. We all
22 know we live on the Gulf Coast. We all know we're in a
23 heavily industrialized area. We're at sea level. So
24 I'm taking you back to 1964; and you've seen this aerial
25 photo, which you can see the site is marked out in

1 yellow.

2 Now, at that time when the facility was
3 built, you can also see it was some distance from the
4 San Jacinto River, which is to the right. However, in
5 the years following the construction and use of the
6 facility, we had things happen. We had subsidence
7 happen and we had dredging happen. And you're going to
8 hear a lot about dredging in this case and you're going
9 to hear a lot about sand mining, which you'll learn all
10 about how they go out and drag up the sand for
11 construction projects out there.

12 Now, let's go back. Look at the aerial
13 photo in 1964, and you can see the land mass. Let's go
14 to 1974 -- '76, I'm sorry. Do you see the striping, the
15 dredging, the sand mining operation to the right? That
16 was a facility that sold the sand for operations.

17 Now let's look at an aerial photo in 1985,
18 20 years after the facility was in operation; and as you
19 can see, substantial land mass and dredging has occurred
20 in the area. So look at the difference in 1964, about
21 the time in 1965 when Virgil McGinnis purchased the
22 property, to 1985, 20 years after the closure of the
23 site, what had happened to the land mass and what
24 dredging in the area had also done to the surrounding
25 areas.

1 In addition, we all know in Harris County
2 in that area there are other industrial facilities
3 around there. You've heard previously in the other
4 opening statements that this waste pit of paper mill
5 sludge from the '60s is not the only source of dioxin in
6 the San Jacinto River.

7 Once again, I want to talk about why did we
8 not have a better picture of what the County did with
9 respect to this facility. What happened? You
10 heard mention that the only documents relating to
11 Dr. Quebedeaux and others were found and produced by the
12 defendants, because Harris County's documents relating
13 to this and other locations were destroyed in a fire in
14 1981.

15 We don't know what other materials were out
16 there. We've gotten numerous letters showing Harris
17 County's approval, blessing, involvement with this site.
18 We have state documents showing their involvement and at
19 the end in 1966 of the site, but nothing else.

20 And look at this timeline, ladies and
21 gentlemen. You see, too, 20 years -- 20 years after
22 this site was in operation is the first time the EPA
23 names dioxin as a hazardous substance, not before then,
24 20 years later.

25 Now, you've heard about the three separate

1 laws; and I'm not going to go through the laws again
2 with you. You're going to hear more about those, and in
3 particular you're going to hear about those laws from
4 the Judge. But I want you to remember that they're
5 attempting to impose penalties under three separate
6 statutes, all of which were passed long after MIMC
7 closed its operations at this facility.

8 And MIMC contends that they also shouldn't
9 be responsible for penalties in this case for the period
10 since they closed those operations, but International
11 Paper and MIMC are involved with the EPA in the site
12 cleanup and remediation at the site.

13 You've heard the Judge read the
14 stipulation. We're not going to stand here and tell you
15 you should go sprinkle dioxin on your cereal. We're not
16 standing here and saying that the right thing shouldn't
17 be done. The right thing is being done. The right
18 thing is being done by IP and MIMC in working with the
19 federal government, cleaning up and remediating this
20 site.

21 The right thing is not to have Harris
22 County and the State come in 50 years after the fact and
23 attempt to get billions and billions in penalties, when
24 the evidence will show they knew about this site. They
25 knew about this site. They were involved with this site

1 from the beginning.

2 In 1985 did they step up? Did they say "We
3 should all do something"? We have responsibilities. We
4 understand that as MIMC, and that's being done with the
5 EPA and the cleanup. And this case has nothing to do
6 with that cleanup. This case is all about civil
7 penalties.

8 So I look at this case and I have been
9 practicing law for 35 years and I say this is really
10 unusual. I have never had a case where I don't have a
11 live fact witness. They're gone, and that's what
12 happens when you wait 50 years to bring a case.

13 We would love to have Virgil McGinnis on
14 the stand to talk to you about how he got involved. We
15 would love to have Bobby Burns talk about how he and
16 Burma Engineering built the facility. We would love to
17 have Dr. Quebedeaux involved. We would love to have
18 some state individuals involved who were -- saw the
19 facility, a Mr. Stanley Thompson, an environmental
20 investigator for the State who had looked at the site
21 before it was shut down in 1966.

22 I would like to call all those people to
23 the stand and give you the opportunity to hear from them
24 about what happened; but because this suit was not
25 brought until 2011, I can't do that. They're gone.

1 So I talked to y'all the other day a little
2 bit about changing laws and where things stand when laws
3 change. And I tried to think of a good example of the
4 situation here, and I thought about a stop sign. And I
5 thought about the fact that we all probably go to work
6 the same way every day.

7 And let's say you're driving down the road
8 in your hometown in 1966 and you're going -- you're on
9 Main Street and at Main Street and Mockingbird there is
10 no stop sign. You are abiding by the law. You are
11 doing the speed limit. Your four tires are in pretty
12 good shape. You are going through it. So you continue
13 to drive through that intersection for nine months in
14 1965/1966. There is no stop sign. There is no light.

15 So then years later, the City puts up a
16 stop sign and it's at the center of Main Street and
17 Mockingbird Lane; and decades later, decades later, the
18 City comes to you and they say, "Do you remember
19 45 years ago you drove through that intersection at
20 Mockingbird and Main? Well, we're going to have to give
21 you a ticket today; and that ticket is going to be not
22 only for not stopping at that stop sign we put up later,
23 that ticket is going to be because we passed a law since
24 then, too, and by golly, you didn't have a catalytic
25 converter on that car in 1965. We're going to give you

1 a ticket for that, too.

2 "And we have an inspection sticker
3 requirement now, and you didn't have an inspection
4 sticker on that car in 1965. We're going to give you a
5 ticket for that, too; and we're going to pile those on
6 for every day you drove through that intersection in
7 1965 and 1966. That's what we're going to do, even
8 though we, who had authority to put a stop sign up
9 there, didn't do it back then. But we've done it now;
10 and now, after 50 years, we're going to come back and
11 ask for \$3.8 billion from you relating to those new
12 laws."

13 Well, that's what they're doing with MIMC,
14 suing them for three separate Texas statutes that came
15 into effect later. They're not here to clean up the
16 site. I cannot say that often enough. The Court has
17 told you that the parties here are participating -- the
18 defendants here are participating in the cleanup and
19 remediation of that site for the material with dioxin in
20 it that nobody knew in 1965 was potentially a hazardous
21 substance.

22 So I'm going to ask you, ladies and
23 gentlemen, to listen to the evidence. You're going to
24 listen to a lot of people who weren't there. You are
25 going to listen to a lot of experts. You are going to

1 listen to a lot of chemical information.

2 But I'm going to -- this is my last chance
3 to speak to you and ask you to listen carefully to the
4 facts that come out on that stand and -- when you make
5 that -- you make the determination about the civil
6 penalties here, if any. But, please, I know you will
7 listen, you will be fair, and you'll do your best on
8 this jury; and I appreciate your time and your
9 commitment to serve here. Thank you.

10 THE COURT: Thank you, Ms. Hinton.

11 Mr. Reasoner.

12 OPENING STATEMENT BY MR. REASONER.

13 MR. REASONER: Good afternoon.

14 THE JURY: Good afternoon.

15 MR. DENNIS: My name is Barrett Reasoner.
16 I didn't get to visit with y'all during voir dire. I
17 stood up and waved. But I heard some of y'all share
18 experiences and the like, and I just want to introduce
19 myself.

20 Again, you met my partner, Mr. Robin Gibbs,
21 we've practiced together for over 20 years, Sydney
22 Ballesteros, my partner, and Mark Giugliano, both of
23 whom you'll be seeing in this case.

24 Importantly, I want to introduce you to
25 Francis Chin, who is our Waste Management of Texas

1 corporate representative, who will be here over the
2 course of the trial representing our employees.

3 I don't have a photo of myself to share
4 with y'all, but that may be to your good fortune. I'll
5 say, to orient things, I was blessed to celebrate my
6 50th a few months ago with my family. So that would
7 have made me two at the time that this plant -- this
8 impoundment stopped being used. Shortly thereafter, I
9 would be playing with my sister in the way, way back of
10 the station wagon as my parents drove down the freeway.
11 So I think that the perspective that my colleagues were
12 talking about is real important.

13 But I want to talk to you about how Waste
14 Management of Texas fits into this case. It's an
15 extremely important case to us and to our employees; and
16 we've been looking forward to the opportunity to talk to
17 you about and to fight this case, even though it's being
18 brought by the Government, because we think what they're
19 doing here is wrong. And I hope you'll see why as I go
20 through the evidence and kind of preview it for you.

21 My partner, Mr. Gibbs, talked about the
22 fact that nobody, not Harris County, nobody in this case
23 is ever going to suggest that Waste Management of Texas
24 had anything to do with generating this waste, selecting
25 the location for the impoundment, constructing this site

1 or disposing of the waste in any way, shape, or form.

2 The fact is, for 37 years after MIMC
3 stopped using this site, Waste Management of Texas had
4 nothing to do with MIMC and it never had anything to do
5 with the site, period. Those facts are never going to
6 be denied by Harris County or anyone else. So the
7 question is: Why is Waste Management of Texas being
8 sued here?

9 The truth, I believe, with all due respect,
10 that you will come to conclude after you've heard the
11 evidence, is that they are overreaching here. The
12 Government is trying to find another deep pocket to
13 recover money and hoping that you, when you hear the
14 phrase "hazardous substance," which, you know, nobody
15 likes to hear that, let's be clear about that, and that
16 when you hear that phrase, that you will ignore your
17 duty to follow the facts and the law and only hold
18 anyone accountable if you find that that's appropriate.

19 I submit to you that it absolutely will not
20 be in the case of my client. The only reason that
21 they'll say out loud that they're coming after us is
22 because of a merger that took place in 2003, where Waste
23 Management of Texas merged with GCE, which was a company
24 that owned the shares of MIMC; and we'll talk about that
25 a little bit here momentarily.

1 But what I want to focus on and want you to
2 keep in your mind is what kind of case this is, and that
3 is it's a penalties case. They are asking you --
4 they're saying, "Members of the jury, you punish.
5 That's what we want you to do. We want a penalty. We
6 want you to punish."

7 To do that and for that to be appropriate,
8 there has got to be conduct that is appropriate for
9 punishment; and I submit to you that on this record,
10 there is no way you can say that about us.

11 Waste Management of Texas could not have
12 changed some behavior or done something differently,
13 because we didn't come along until 2003; and the
14 absolute truth -- the absolute truth that you're going
15 to see from this evidence is that it was not until 2005
16 that Waste Management of Texas had any knowledge about
17 the existence of this site.

18 If I could take you -- here is the
19 timeline, folks, that just kind of laid out -- I know
20 you've seen a lot of timelines. I'm going to try to
21 move through this quickly because we're at the end of a
22 long day.

23 You've heard about '65 and '66 being the
24 time of operations, a 37-year time period until 2003;
25 and then we've got that merger that I've talked to you

1 about, GCE merging with Waste Management. An important
2 thing about that is here, when you see correspondence
3 that took place in 2005, that's when the TCEQ is
4 contacting -- is making contact and saying to Waste
5 Management that "There is this site, and we believe it's
6 connected somehow to a subsidiary."

7 Look at what Joe Fischer at Waste
8 Management -- I'm just showing you this to show you what
9 our state of mind was there. Mr. Fischer: "I checked
10 further with my local field manager and others to gain
11 additional information whether we had ever owned the
12 20-acre tract of land near I-10 and the San Jacinto
13 River. None of the people were familiar with the site
14 and none of them believed we ever owned it. Good
15 luck..."

16 So that was what was going on internally
17 when we heard from the TCEQ, no knowledge about it. We
18 couldn't find a record of any such site. And then look
19 at the response from the TCEQ: "Joe, thanks for the
20 quick response. I have only recently found out that the
21 current deed holder to the property is Virgil C.
22 McGinnis Trust. I apologize for the heartburn..."

23 What the TCEQ is referring to there is what
24 Ms. Hinton has talked to you about a bit ago; and that
25 is that it was the property -- the land was owned by

1 Mr. McGinnis, Virgil C. McGinnis Trust. So if you go in
2 the property records and try to -- if you tried to look
3 for some land owned by MIMC, it wouldn't be there. It
4 was in Mr. Virgil C. McGinnis' name under the deed
5 records. So it's not something that showed up in any
6 way, shape, or form within Waste Management, even when
7 our guys are trying to look and, you know, "What
8 property do we have? What is this about? No record of
9 it, and understandably it couldn't be found.

10 But importantly, and there is the -- the
11 McGinnis -- you've seen this before. This is the
12 McGinnis deed.

13 Importantly, and you've heard this talked
14 about, once it was confirmed that this was a property
15 that MIMC did use all those years ago, the EPA has
16 overseen MIMC and IP's investigation, removal, and
17 remediation of the site. That's a process ongoing under
18 the EPA and not to do with this case.

19 But what has Waste Management of Texas
20 done? What they have done is they have provided capital
21 contributions from one company to another to MIMC to
22 provide all the funds that MIMC needs to participate in
23 that EPA remediation process. So even though it's
24 separate companies and it's a subsidiary, Waste
25 Management of Texas has made capital contributions for

1 all the funds they need to do that. And this is true
2 even though the EPA did not name Waste Management of
3 Texas as a responsible party. So that is something that
4 Waste Management of Texas has, nevertheless, done.

5 And what we are here about today -- I know
6 it's been repeated over and over, but it's so important
7 to keep in mind -- this is not a case about remediating
8 or cleaning up that site and none of the funds the
9 Government is seeking here will go to that effort,
10 period. That is the situation, and you've heard the
11 stipulation to that effect.

12 Nobody is here and Waste Management of
13 Texas is not here saying that hazardous waste is not
14 important, that there shouldn't be a cleanup effort
15 going on up there. We're not saying any of that.
16 Indeed, we're a Houston company and it's important to us
17 to do what we're doing. But what we cannot abide and
18 what is not justifiable is the Government coming after
19 us for a massive penalty on the facts of this case.

20 I want to go, if I could, for a minute into
21 the penalty because you've heard talk about up to
22 \$25,000 a day; but let's be real clear about that. What
23 the Government is doing here is they are trying to
24 collect under multiple statutes.

25 You heard Mr. Carter identify the statutes,

1 three different statutes for you. They are saying: We
2 want to collect for the same act -- the same actions
3 under all three of these statutes. So multiply your
4 25,000 a day times three.

5 And then they're saying: Well, this one
6 site, well, that's -- they're different compartments.
7 So it's really multiple sites. So let's multiply the
8 25,000 more again.

9 So what they're really seeking here, even
10 as to my client alone, is over a hundred thousand
11 dollars a day. That is how you get -- that's how they
12 have done the gyrations to get to this
13 multi-billion-dollar claim that they're here before you
14 pursuing. I think that -- I think that and the facts
15 and the law that you are going to hear speak for itself
16 and I don't need to elaborate on that.

17 But I have talked about Waste Management's
18 lack of involvement during the real time; and when I say
19 that, "the real time" is a phrase. And I hope I'm not
20 annoying you; but what I mean is when you look before
21 litigation, you look at what people were saying in
22 documents, what they were doing during the actual
23 events, what were they saying in the real time.

24 And here, you've already heard at some
25 length about the County's involvement. I won't belabor

1 that with you because you've gone through it. But
2 Dr. Quebedeaux's involvement, the approval of the site
3 and the equipment, referring to that as ideal, all of
4 that is critically important; but I think it has been
5 well covered by the other lawyers here. But it's
6 critically important at the front end that Harris County
7 was involved thoroughly and completely in it.

8 But what I want to cover with you now is
9 the fact that it did not stop there, okay. Harris
10 County's involvement did not stop there.

11 Directly next door to the impoundments was
12 land owned and operated by a fellow -- operated by a
13 fellow named Captain Jack Roberts, you'll hear in the
14 evidence. And Captain Jack Roberts, starting in the
15 mid-1970s, applied for and received permits for
16 dredging. That was the business. It was a sand mining
17 business, and he applied for and received permits to
18 dredge.

19 And if you look here, we've got Exhibit --
20 I cant read the number from here, but it will be
21 presented to you repeatedly. And it is the dredging
22 application for Captain Jack; and look here, this is
23 critically important. It shows the area that is to be
24 dredged. And we have marked -- if I may approach, Your
25 Honor?

1 THE COURT: Yes.

2 MR. REASONER: And now at close range, I
3 can tell you it is Exhibit 1240. But this is the permit
4 application and an attachment to it. We have blown up
5 the attachment sheet. This is the area to be dredged.
6 And look at this yellow arrow saying "McGinnis," okay.
7 So that's -- that's -- the site right there was
8 surrounded in all respects by the dredging application
9 area.

10 Now, you're going to hear from experts,
11 Mr. Bob Zoch, an engineer, and we're also going to call
12 Dr. Mark Johns who will explain what dredging is. And
13 this is not actually Captain Jack's dredging machine,
14 but it's just a dramatization there to show you how this
15 works.

16 But you've got hydraulic equipment with
17 blades that go down into and can be raised and goes down
18 that way, carves into whatever the soil is and then
19 sucks up the sand. So as you can see, it's an extremely
20 strong, rough, disruptive piece of equipment; and what
21 you'll hear is that millions of cubic yards of sand were
22 dredged.

23 Now, I want to take you through the process
24 of how Captain Jack got this permit because it's
25 critically important. If you look at the public notice

1 sent in January of 1991 -- here you have an application
2 for 8.7 million cubic yards of sand. And this is the
3 Army Corp of Engineers. They're involved in the
4 permitting process.

5 And what they do is they give a public
6 notice and they say, "We are soliciting comments from
7 the public, federal, state, local agencies and
8 officials." They let people who might be interested to
9 know that "We've got this application; and we want you
10 to comment on whether you object to this dredging
11 application, any comments you have pro or con." That's
12 what that is.

13 But here is what is very interesting. If
14 you look at the third page, there is a list of
15 addressees -- actually, I say the third. It's the third
16 slide. But there is a list of folks who got that, who
17 received this notice; and right there is the County
18 Judge of Harris County.

19 Now, Mr. Wotring, in his opening statement
20 talked about the fact that that is not a judge like
21 Judge Baker, that is the head county official; and I'm
22 sure y'all have known that or run across that along the
23 way here in Harris County.

24 So look here (indicating). We have another
25 public notice in 1996. Again, you see an area -- we've

1 got Phase 1 and Phase 2 and then the freeway and, again,
2 the impoundment area. So right around it again we have
3 applications from Captain Jack for dredging rights.

4 So who else got a copy again? The County
5 Judge of Harris County, and you see the address there on
6 Preston on the list of addressees who received it.

7 Now, remember, in talking about our
8 timeline as we have now a lot of the day, remember that
9 Harris County knows about that impoundment. Remember,
10 Dr. Quebedeaux approved the site, talked about the
11 equipment, talked about the methods to be used, et
12 cetera, so they knew that was there.

13 I want to tell you -- why am I talking
14 about this dredging issue? There are two reasons.
15 Before I go any further, I want to make that real clear.
16 There are two reasons that are very important.

17 One is if somebody else comes in and
18 dredges into a site or an impoundment and causes a
19 release of a hazardous substance, that dredger or that
20 third party who is doing that is causing the release of
21 that substance. Remember Mr. Carter was talking to you
22 about "cause, suffer, and allow." You look at what the
23 cause was. Causation is the concept that the Court is
24 going to talk to you about at the end. This is why this
25 is important that this dredging went on around the site

1 and ultimately, you'll see, on the site.

2 But why else? I'm asking you to look at
3 the conduct of Harris County here, as you evaluate the
4 reasonableness of the defendants' conduct, okay.

5 They are bringing a penalty case, saying we
6 should be punished. That's their case. You can look at
7 what the County and the State did in the circumstances
8 when you are evaluating the defendants' conduct. You
9 are looking at what is reasonable. Look at what they
10 thought was reasonable during the real time.

11 A number of organizations did raise
12 objections to these dredging applications. The evidence
13 will show you that Harris County did not. They did not
14 say anything. Even though they received full plans in
15 these notices, Harris County made no objection to the
16 permit applications.

17 And you'll hear testimony. Mr. Allen, in
18 his deposition, Mr. Allen who is here with the County
19 Pollution Department:

20 "And does Harris County have the
21 opportunity to object to proposed dredging?"

22 With notice, you have an opportunity" --

23 "ANSWER: With notice, you have an
24 opportunity to comment -- and 'comments' means
25 objections, I guess. Yes.

1 QUESTION: Has Harris County in the past
2 objected to dredging in certain areas in Harris County?

3 ANSWER: Yes."

4 So it's something they knew they had a
5 right to do and they have done at various times in the
6 past. In this situation, in spite of having knowledge
7 on the front end about the impoundment and knowledge
8 about the application to dredge, they did not. They
9 made no -- no comment, no objection, no statement. That
10 was their conduct in the real time.

11 Look at, please, what -- the next exhibit
12 as to TCEQ, the other party here that is, again, a
13 nominal party. They are part of this. They are seeking
14 a half of the funds and attorney's fees, as has been
15 discussed.

16 Texas Parks & Wildlife Department writes a
17 letter to the TCEQ, and you see that they have noticed
18 dredging -- they've become aware of information that
19 suggests there are old waste pits in a sand bar in the
20 San Jacinto River just north. So they have -- the Parks
21 & Wildlife Department is saying, "We have discovered
22 that there appear to be old waste pits there."

23 Look at the next page of this letter that's
24 written to TCEQ: "The potential presence of sediment
25 contamination is an immediate concern as the San Jacinto

1 River near the I-10 bridge is very active with respect
2 to dredging, mining and construction. These activities
3 may be spreading potentially contaminated sediments or
4 resuspending dioxins in the water column."

5 They are concerned about dredging, and
6 they're telling TCEQ about this in 2005.

7 Look at the last page of this document.
8 They note -- they talk about sand mining and processing
9 and they say it envelopes -- envelopes the suspected
10 waste site all around it. That's what TCEQ is hearing
11 from Texas Department of Wildlife.

12 What happened next, again, as you're
13 evaluating the reasonableness of conduct, the TCEQ,
14 which works with the Army Corp of Engineers, coordinates
15 with them on these permits, did nothing for three years.
16 For three years after receiving this information from
17 the Texas Parks & Wildlife Department, the TCEQ did
18 nothing.

19 And, indeed, if you look here at the next
20 slide, they were -- they actually -- his -- Captain
21 Jack's permit was even extended until December 27th of
22 2007. So in spite of this information having been
23 brought to the TCEQ's attention, they allowed, without
24 objection, the permit to be extended for Captain Jack on
25 the dredging.

1 Finally, three years later, October 29th of
2 2008, you find that they make an objection here. And
3 they say... "encouraging the Corp" -- the bolded
4 language there, they encouraged the Corp to revoke or
5 suspend the permit for dredging. So three years later
6 they took action.

7 Now, the evidence will show you -- and,
8 again, this is something that the experts will be able
9 to cover with you better, but I want to preview it for
10 you. And there is just -- the Corp of Engineer has, in
11 fact, ultimately -- ultimately decided to suspend the
12 dredging permit.

13 But I want you to look at with me just
14 briefly -- and these can be blown up individually. We
15 compare 1995, an aerial photo -- and we've circled in
16 yellow, you see the northwest corner of the impoundment,
17 a smooth around the edge there.

18 Now look in 1997 the situation. You can
19 see that, and experts will testify about that, tell-tale
20 signs of dredging, including a huge chunk taken out of
21 the northwest corner of the impoundment. So you will
22 hear expert testimony about the fact that this is
23 indicative of dredging actually penetrating into this
24 impoundment.

25 And that is something that Harris County

1 today may be denying in this trial; but I remind you,
2 and you saw these exhibits with Mr. Carter, I remind you
3 in the real time that Mr. Rock Owens in his -- the
4 exhibit we saw said it looked like, remember, it looked
5 like a large portion of one of the cells was dredged
6 away. Mr. Owens knew what he was looking at at that
7 time; and, again, that's the chief environmental
8 attorney the County.

9 Also remember the Texas Parks & Wildlife
10 Department, remember what they said in 2005. I can't
11 ever pronounce his name. People do it differently.
12 "Sipocz" perhaps, but a gentleman with the Texas Parks &
13 Wildlife. Again, Mr. Carter showed you this: "... I
14 believe more firmly that... mining was responsible for
15 the increase in dioxin levels from '94 to 2002." Two
16 separate sources, real time information about what they
17 thought was causing this release, okay.

18 Now, you're going to hear a different tune
19 from them during this trial; but I ask you in your role
20 as fact finders and judges of credibility to judge what
21 you believe to be more credible in that regard.

22 Just so our timeline is in mind, I'll
23 repeat it but it's important, it wasn't until 2003 --
24 this is all before Waste Management of Texas is in any
25 way on the scene.

1 Dr. Johns will also, just to preview that
2 testimony for you a bit more and I'll move on, but he
3 will indicate to you also that the dredging in the
4 northwest corner, that you can see that it was -- that
5 there was sand moved over to the opposite bank where
6 there was a mining property, Big Sky -- excuse me, Big
7 Star Mining, you'll hear evidence about that, and that
8 there was, indeed, dioxin -- high concentrations of
9 dioxin over there that could be traced to the site, in
10 his opinion.

11 Now, when you listen -- you're going to
12 listen to experts from both sides; but I want you to
13 keep in mind when you hear from the experts that the
14 County is going to put forward on these issues, they
15 were not told -- they have testified that they were not
16 told in any way, shape, or form about dredging, did not
17 include that in their analysis. When they did their
18 analysis to try to determine whether there was a
19 release, you'll hear them -- you'll hear them admit that
20 the County's attorneys and personnel did not tell them
21 about dredging and did not ask them to consider it in
22 any way, shape, or form.

23 I expect that under cross-examination, they
24 will have to admit -- even they, as experts for the
25 County, will have to admit that dredging could have

1 caused a release of this -- of this substance; and
2 although it's not really our area of focus in the case,
3 I also want to ask you to focus on what those experts
4 are and are not saying. They have -- as you heard, a
5 daily release of dioxin is what they are trying to prove
6 to you here. And the Judge, I believe, will instruct
7 you that to get a penalty on a day, you have to show
8 that there was a release that day. That's what they're
9 trying to do, is to show that there was a release of
10 this hazardous substance every day over a period of
11 decades.

12 But listen carefully to their experts,
13 because these gentleman, Mr. Bedient and Mr. Pardue,
14 will not be able to tell you, I expect, how dioxin
15 supposedly got out on a given day, how much got out, how
16 it was transported on a day, how much was there in the
17 beginning and how much remains, absolutely imprecise in
18 terms of what they are trying to tell you and trying to
19 prove is daily release; but that has not stopped the
20 County for asking for a massive penalty on the basis of
21 their testimony.

22 I want to talk to you just a bit more about
23 Waste Management of Texas and how the County is trying
24 to come up with a way to connect us with these events
25 and hold us liable for these events. I believe that

1 you'll -- you will find that there is not a real
2 connection or not a legal connection that they can rely
3 on there.

4 Opposing counsel spoke for over an hour and
5 spoke very eloquently, but he spoke very little about
6 Waste Management of Texas, and for good reason. Chuck
7 Rivette is our corporate representative. You're going
8 to hear from Mr. Rivette. He is going to tell you that
9 Waste Management of Texas has been operating since the
10 '70s. It's a Houston-based company. I think Mr. Gibbs
11 talked to you a little bit about it, about trash
12 collection, recycling, landfill operations.

13 And Mr. Rivette will also explain that it's
14 a grassroots-based operation, in that when Waste
15 Management of Texas has acquired some subsidiaries over
16 the years, they leave those in place because it's a
17 very -- this sort of waste handling, the waste
18 management business is a community-by-community
19 situation. So they keep subsidiaries in place that deal
20 directly with the community in place.

21 He's not going to know much of anything.
22 He's not going to know anything about the site, other
23 than what he's heard here and what he heard when -- in
24 2005, period; but, obviously, that's not something to
25 hold against him, since the fact that we weren't around

1 at that time.

2 We believe that the only evidence that the
3 County is going to rely on is this 2003 merger. I'm
4 sure it's a term y'all -- y'all read about and are
5 familiar with. You know, it's like a marriage between
6 two companies.

7 The County wants to sort of blur the lines
8 of who merged with whom here. It's important to keep in
9 mind that it was Waste Management merging with GCE,
10 okay, not MIMC. MIMC has at all times remained its
11 separate company; and they, again, are represented by
12 Ms. Hinton here today.

13 You heard from her very -- I think very
14 well-stated why MIMC should not be liable and that the
15 evidence is going to support that; but also -- what you
16 are also going to have to deal with, is the County's
17 argument that because Waste Management of Texas merged
18 with GCE, who owned MIMC, that somehow that makes Waste
19 Management of Texas liable or responsible for all of
20 MIMC or any other subsidiary's actions through the
21 years. That's not accurate, and nor is it fair.

22 A couple of things to keep in mind there.
23 Number one, this is a penalty case. I have talked about
24 that. You are evaluating whether somebody has done
25 anything that is worthy of a penalty. It is impossible

1 to seriously say Waste Management of Texas should be
2 penalized for something that took place that it had no
3 control over, no part in, had no knowledge of.

4 Second, to get a finding, to obtain these
5 large penalties they want, they need to show that Waste
6 Management of Texas did something wrong with respect to
7 the site. Just saying that you own shares is not
8 enough. That is not the way our system works or the way
9 it is set up.

10 So let's look at what the County says.
11 What is the evidence that the County is relying on? You
12 saw the two documents in opposing counsel's opening
13 argument. There are two documents, and they say -- I
14 want to look at both of them with you briefly. They say
15 very little, okay.

16 What they do not say is anything about
17 dioxin, anything about harmful waste or toxins or waste
18 even being from a paper mill or waste being released.
19 These two documents they rely on say nothing of that
20 sort. They simply mention the site.

21 Let's go to the documents specifically.
22 Here is the 1992 letter to Mr. Fatjo that opposing
23 counsel talked about. Let's look at that.

24 First of all, one thing that didn't come up
25 in counsel's talk is that's a 50-page document, okay.

1 So -- and this is on -- the item that he highlighted for
2 you is on Page 42 of that 50-page document.

3 And this is from back in 1992, okay. So
4 it's 11 years before Waste Management of Texas is on the
5 scene. But, again, if you look at this language, it
6 says the company owns land located adjacent to the San
7 Jacinto River which was used for certain waste disposal
8 activities, completely general; doesn't tell you
9 anything about any hazard, any dioxin, any paper waste,
10 anything of that sort.

11 It says there is no pending or threatened
12 liabilities; and then at the end there is just kind of
13 some lawyer catch-all language that says, "Due to the
14 expansive nature of environmental laws" -- of course,
15 there can always be something, okay. That's all that
16 document says, and I encourage you to look closely at
17 that.

18 There is nothing there to alert anyone who
19 looked at it -- assuming that somebody at GCE, you know,
20 looked at Page 42, that's not something that somebody
21 would say, "Oh, my gosh, you know, we need -- this is a
22 crisis. We need to go find out what this is and what
23 this is all about." That's not the kind of document
24 that is, in any way, shape, or form.

25 Look at the other document he relies on,

1 the 1968 MIMC board minutes. Again, Ms. Hinton talked
2 about that at some length with you; but I want to focus
3 you in. And I apologize. This is an old document.

4 But if you look -- it's sort of faint, but
5 we don't have better copies of it. But, again, it's
6 referring to, you know, real estate on the San Jacinto
7 River which was used as a dump for waste material hauled
8 by the corporation. So look closely at that language,
9 as well. No mention of paper waste, dioxin, hazards,
10 release, anything like that.

11 Somebody who is looking at that in 2003
12 would have no reason to see that, or in '92 for that
13 matter, would have no reason to see it and say, you
14 know, "Oh, my gosh, this is -- this was a problem. We
15 need to go look at that. "It just refers to a site that
16 was used by this point decades earlier; and that's it,
17 okay.

18 Those are the -- those are the two
19 documents that this entire -- against my clients, a
20 hundreds of millions of dollars case rests on, okay.
21 And, again, you can look at the knowledge and the
22 conduct of the County when you look at what we did and
23 evaluate the reasonableness of the conduct and evaluate
24 our conduct.

25 With perfect knowledge, with the County

1 having knowledge on the front end and the County having
2 knowledge along the way about dredging applications,
3 with all of the knowledge they have, they are here
4 asking you, as a jury, to award against my client
5 hundreds of millions of dollars and against the group
6 billions of dollars. And against us the case is, well,
7 somebody really should have -- in a merger somebody
8 should have dug up these documents, seen that reference,
9 jumped to a conclusion that there could potentially be
10 some serious situation, gone out, found it,
11 investigated.

12 When you follow the logic, when you look at
13 what they're saying we should have done and what the
14 liability rests on, that they are trying to bring
15 against us, it really stretches the imagination to the
16 breaking point. And we very much feel strongly about
17 that, and we very much look forward to presenting the
18 evidence to you.

19 I appreciate your patience late in the
20 afternoon, and thank you very much for your service.

21 THE COURT: Thank you, Mr. Reasoner.

22 All right. Ladies and gentlemen, as we
23 discussed, we're going to break for the day and start
24 with our first witness in the morning. We have some
25 other work we can do, and we'll let you go home. So

1 y'all have a good evening, and we'll see you in the
2 morning ready to start up at 9:30.

3 (Evening recess)

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1 THE STATE OF TEXAS
2 COUNTY OF HARRIS

3 I, Kimberly Kidd, Official Court Reporter
4 in and for the 295th District Court of Harris County,
5 State of Texas, do hereby certify that the above and
6 foregoing contains a true and correct daily copy
7 transcription of all portions of evidence and other
8 proceedings requested in writing by counsel for the
9 parties to be included in this volume of the Reporter's
10 Record, in the above-styled and numbered cause, all of
11 which occurred in open court or in chambers and were
12 reported by me.

13 I further certify that this Reporter's
14 Record of the proceedings truly and correctly reflects
15 the exhibits, if any, admitted, tendered in an offer of
16 proof or offered into evidence.

17 WITNESS my hand this the 16th day of
18 October, 2014.

19
20
21 /s/ Kimberly Kidd
22 Kimberly Kidd, Texas CSR No. 2437
23 Expiration Date: 12/31/15
24 Official Court Reporter
25 295th District Court
Harris County, Texas
201 Caroline, 14th Floor
Houston, Texas 77002
(713) 368-6453

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